Supreme Court, U.S.
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No. _____ 04 124

In The

Supreme Court of the United States

CHANDER KANT and ASHIMA KANT,

Petitioners,

v.

BREGMAN, BERBERT, SCHWARTZ & GILDAY, L.L.C.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

HENRY ST. JOHN FITZGERALD
2200 Wilson Boulevard, Suite 800
Arlington, Virginia 22201
(703) 525-8753
Counsel for Petitioners

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Does Federal Rule of Civil Procedure 8(a)(2), which provides that a United States District Court will hear and decide a civil case if the plaintiff's Complaint contains a "short, plain statement of the claim," permit a United States District Court or a United States Court of Appeals to impose upon a plaintiff, as a condition to hearing a plaintiff's case, pleading standard more stringent than that stated in Rule 8(a)(2)?

PARTIES TO THE PROCEEDING

The caption of the case contains the names of all parties.

Petitioners are not corporations.

Respondent is a Maryland limited liability company whose securities are not publicly traded but which is owned by a number of members. The identities of its current members are not publicly available, but information regarding its owners and associates is published in Martindale-Hubbell, Maryland volume.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
CITATION TO OPINIONS AND ORDERS BELOW	1
BASIS FOR JURISDICTION IN THIS COURT	1
CONTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE	2
FEDERAL RULES OF CIVIL PROCEDURE INVOLVED	2
STATEMENT OF THE CASE	3
A. Proceedings Below	3
B. Facts Material to the Question Presented	3
C. Basis for Jurisdiction in the District Court	6
REASONS FOR GRANTING THE WRIT	7
Opening Concession	7
I. The Amended Complaint Here Complies with Rule 8(a)(2) and Should Not Have Been Dismissed	8
II. The Fourth Circuit's Decision is in Direct Conflict with Binding Precedent of This Court	10
III. The Fourth Circuit's Decision Conflicts With Precedent In Other Courts of Appeals	21
CONCLUSION	23

TABLE OF CONTENTS – Continued

Page

APPENDIX

CIRCUIT COURT OPINION ..... App. 1

DISTRICT COURT ORDER ..... App. 3

DISTRICT COURT OPINION ..... App. 4

CIRCUIT COURT ORDER DENYING REHEARING ..... App. 15

EXTENSION OF TIME TO FILE PETITION ..... App. 16

AMENDED COMPLAINT ..... App. 18

CONSTITUTIONAL AND STATUTORY PROVISIONS ..... App. 50

TABLE OF AUTHORITIES

Page

CASES

Bass v. E. I. DuPont de Nemours & Co, 324 F.3d 761 (4th Cir. 2003) 12

Conley v. Gibson, 355 U.S. 41 (1957) 5, 9, 10, 11, 14

Leatherman v. Tarrant County Narcotics and Intelligence Unit, 507 U.S. 163 (1993) 5, 9, 11, 14

Scheuer v. Rhodes, 416 U.S. 232 (1974) 5, 10, 11, 14

Swierkiewicz v. Sorema, 534 U.S. 506 (2002) 5, 9, 11, 14, 15, 18

Walker v. Thompson, 288 F.3d 1005 (7th Cir. 2002) 22

CONSTITUTIONAL PROVISIONS

Fifth Amendment 2

Fourteenth Amendment 2

STATUTES

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1331 ..... 3, 6

28 U.S.C. § 1343(a)(1) 6

28 U.S.C. § 1343(a)(2) 6

28 U.S.C. § 1343(a)(3) 6

28 U.S.C. § 1343(a)(4) 6

28 U.S.C. § 1367(A) 2

TABLE OF AUTHORITIES – Continued

Page

42 U.S.C. § 1981 ..... 2, 6
42 U.S.C. § 1982 ..... 2, 6
42 U.S.C. § 1983 ..... 2, 6
42 U.S.C. § 1985 2
42 U.S.C. § 1985(3) 6
42 U.S.C. § 1986 ..... 2, 6

RULES

F.R.C.P. Rule 8(a)(2) 2, 3, 8, 10, 11
F.R.C.P. Rule 8(f) 2
F.R.C.P. Rule 12(b)(6) 2

PETITION FOR A WRIT OF CERTIORARI

Chander Kant and Ashima Kant respectfully request the Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit which affirmed the order of the United States District Court for the District of Maryland dismissing his Amended Complaint for failure to state a claim upon which relief can be granted.

CITATION TO OPINIONS AND ORDERS BELOW

The opinion of the Court of Appeals is unreported. It is reproduced in the Appendix at App. 1.

The opinion of the District Court is also unreported. It is reproduced in the Appendix at App. 4.

BASIS FOR JURISDICTION IN THIS COURT

The jurisdiction of this Court is conferred by 28 U.S.C. § 1254(1).

This Petition is timely filed.

The Court of Appeals entered its judgment on January 9, 2004. App. 1. The Court of Appeals denied rehearing on February 19, 2004. App. 15. This Court granted Petitioners an extension of the time period for filing this Petition to and including July 18, 2004. App. 16.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

Constitutional Provisions

Fifth Amendment
Fourteenth Amendment

Statutes

28 U.S.C. § 1367(A)
42 U.S.C. § 1981
42 U.S.C. § 1982
42 U.S.C. § 1983
42 U.S.C. § 1985
42 U.S.C. § 1986

Constitutional provisions and statutes are reproduced in the Appendix at App. 50.

FEDERAL RULES OF CIVIL PROCEDURE INVOLVED

Rule 8(a)(2) of the Federal Rules of Civil Procedure provides in relevant part: "A pleading . . . shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief."

Rule 8(f) of the Federal Rules of Civil Procedure provides: "All pleadings shall be so construed as to do substantial justice."

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides that a party may move for the dismissal of a pleading for "failure to state a claim upon which relief can be granted."

STATEMENT OF THE CASE

A. Proceedings Below.

The Complaint was filed in the United States District Court for the District of Maryland. That court had jurisdiction under the provisions of 28 U.S.C. § 1331; 28 U.S.C. § 1367(A); 42 U.S.C. § 1981; 42 U.S.C. § 1982; 42 U.S.C. § 1983; 42 U.S.C. § 1985; and 42 U.S.C. § 1986.

The Defendant moved to dismiss for failure to state a claim and Plaintiff filed an Amended Complaint. That is the Amended Complaint which is here on appeal. In that Amended Complaint the Petitioner, writing *pro se*, includes statements such as "Defendant alleges in its motion to dismiss . . . " which are references to the earlier motion to dismiss.

Defendant renewed its motion to dismiss for failure to state a claim.

Despite voluminous allegations in the Amended Complaint explicitly averring that Respondent conspired with state officials to deprive him of federally protected rights, the District Judge stated that the allegations of the Amended Complaint strained his "credulity" and dismissed the Amended Complaint. App. 12.

The Kants appealed the dismissal to the Fourth Circuit, Citing Rule 8(a)(2) of the Federal Rules of Civil Procedure and binding precedents of this Court. Notwithstanding these precedents, the Fourth Circuit affirmed the District Court, saying that Petitioners had not pleaded sufficient "facts" to support their claims. App. 2.

B. Facts Material to the Question Presented.

Respondent is a Maryland law firm and its representatives who acted in this case are white Caucasians.

Petitioners are of East Indian race and ethnicity who became naturalized American citizens before the events of this case.

It is undisputed on this record that the Respondent here, a law firm which had previously represented the Kants sued the Kants for an unpaid bill of $4,745.22, obtained a default judgment against the Kants for $5,378.32. (App. 30), sought and obtained a levy and a sheriff's sale under that levy of a house and lot in Montgomery County, Maryland, owned by the Kants. It is undisputed that the sheriff valued the house and lot at $199,000.00 and that the sheriff sold the property to a buyer for $6,020.00. App. 38. It is undisputed that during this whole process the Kants were attempting, *pro se*, to defend against the Respondent law firm's claim, to appeal the default judgment, to post a bond sufficient to prevent collection on the judgment and prevent the sale. Cash in an amount sufficient to secure the Respondent judgment creditor and prevent the sale was actually received by the Clerk of the Court and was held in the Clerk's bank account until months after the sheriff's sale. App. 36.

It is also clearly shown by this record that the state court proceedings, which went against the Kants at every turn, were so unusual and uniformly harsh to the Kant's, and contrary to the court practices ordinarily accorded to other citizens, as to permit the inference to be drawn that because of their race the Kants were receiving different treatment from that accorded to other litigants.

> Undeniably, there are individuals who hold hostile attitudes toward those of Indian descent. It strains credulity, however, to conclude that each and everyone of these independent individuals

> identified by the Kants in this Amended Complaint and in the *Kant v. Nagle & Zeller* complaint, including four different state court judges, all held racist views such that they united together for the purpose of depriving the Kants of their civil rights. While the court must take the allegations in a complaint as true for the purpose of deciding a motion to dismiss, it is not compelled to embrace any conclusion, no matter how implausible, that a plaintiff might seek to draw from those allegations. *See Cardwell v. Sears Roebuck and Co.*, 821 F.Supp. 406, 409 (D.S.C. 1993) ("It is the duty of this court to seek the truth from the facts forming the basis of the plaintiff's claims and not to be beguiled by the conclusory allegations of the pleadings. Bald conclusions unsupported by the facts are insufficient to state a claim.") (citations omitted).
>
> If the Kants take issue with the manner in which their attorneys represented their interests, the proper course would be to bring suits for malpractice against those attorneys. Similarly, if legal or procedural errors were committed by the judges that heard either the matters related to the underlying landlord-tenant dispute or the disputes between the Kants and their former attorneys, or if those judges somehow abused their discretion, the proper course to review those decisions is through the state appellate courts.

It should be noted that the District Court did not mention any case decided by this Court, such as *Conley v. Gibson*, 355 U.S. 41 (1957); *Leatherman v. Tarrant County Narcotics and Intelligence Unit*, 507 U.S. 163 (1993); *Scheuer v. Rhodes*, 416 U.S. 232 (1974); or *Swierkiewicz v. Sorema*, 534 U.S. 506 (2002), but instead cited a 1993 District Court case from within the Fourth Circuit.

The District court's language quoted above closes that United States court to the *federal* claim of anyone who is the victim of state wrongs *and also* federal wrongs. Under that ruling victims of wrongs redressable in a United States court as well as purely non-federal wrongs will have to abandon their federal claims and seek redress only for their non-federal claims.

While it may strain the credulity of the district judge below, conspiracies of court personnel, including judges, with practicing attorneys is by no means unknown. *See*: *Dennis v. Sparks*, 449 U.S. 24 (1980). A 42 U.S.C. § 1983 case involving a corrupt state court judge. Proof may be difficult, but it is by not "beyond doubt" that the Kants will be unable to prove a set of facts which will support their recovery under this Amended Complaint. All judges were formerly practicing attorneys and often maintain close relations with attorneys. Judges and court personnel can harbor racial prejudice. Judges and court personnel can be inveigled into "pulling strings" to help a friend carry out a racially motivated vendetta. The peculiarity of the treatment accorded the Kants by court personnel, including judges, when additional facts are known, may well give rise to a presumption in the Kants' favor at trial, with the burden on the defendant to overcome it. Circumstantial evidence may well be developed by investigation and discovery which would support a verdict and judgment for the Kants.

C. Basis for Jurisdiction in the District Court.

Jurisdiction in the District Court was invoked under 28 U.S.C. §§ 1331, 1343(a)(1), 1343(a)(2), 1343(a)(3), and 1343(a)(4), 42 U.S.C. §§ 1981, 1982, 1983, 1985(3) and 1986.

REASONS FOR GRANTING THE WRIT

Opening Concession

Petitioners need to make an initial concession prior to the discussion of the reasons for granting the writ.

The Amended Complaint here is a *pro se* Complaint, written by a non-lawyer and contains many defects which we must acknowledge.

Verbosity and sweeping allegations of conspiracy and wrongdoing are often regarded by experienced lawyers and judges as signals of a case which may take up time but which probably won't succeed. But the strong emotions which are usually felt by persons who believe they have been discriminated against can also produce such verbosity and wide-ranging claims, which signal emotion, to be sure, but do not necessarily signal weakness of the underlying case. This *pro se* Amended Complaint exhibits such emotion, as many *pro se* pleadings do, perhaps especially those filed by persons who feel they have been victims of discrimination.

This Petition will ignore, and will ask the Court to ignore, the excesses of the *pro se* Complaint in order to focus attention on the language which states and gives notice of its core claims. That language, stripped of surplusage, shows that the Amended Complaint easily satisfies the requirements for obtaining a hearing in a United States court of claims of discrimination under the Constitution and federal statutes.

I. The Amended Complaint Here Complies with Rule 8(a)(2) and Should Not Have Been Dismissed.

The Amended Complaint alleges that the defendant law firm, by then an enemy of the Kants and motivated by racial prejudice against them, in the course of seeking to collect a $4,700 legal bill owed by Petitioners, entered into successive conspiracies with public officials, including court personnel and two judges, to deprive Petitioners of federally protected rights to equal protection of the laws, due process and freedom from racial discrimination.

The Amended Complaint alleges that the Respondent law firm, motivated by racial animus, conspired with court personnel also inspired by racial animus, to:

> 1. Cause a default judgment to be entered against Petitioners for the legal fee when all involved knew that Petitioners were trying their best, *pro se*, to dispute, litigate and appeal the fee claim,
>
> 2. After obtaining the default judgment for $5,378.52, Respondent conspired with court personnel to have a levy issued on the default judgment and have a sheriff's sale conducted under that judgment whereby a house and lot owned by Petitioners in Montgomery County Maryland, which was valued by the Sheriff conducting the sale at $199,000.00, was sold to a buyer for $6,020.00, and
>
> 3. After the sheriff's sale Respondent conspired with court personnel to have that sheriff's sale ratified by the state court.

The basic error committed by the courts below is easily shown: an obvious refusal to apply principles of

federal notice pleading which are well established by cases such as *Conley v. Gibson*, 355 U.S. 41 (1957); *Leatherman v. Tarrant County Narcotics and Intelligence Unit*, 507 U.S. 163 (1993) and *Swierkiewicz v. Sorema*, 534 U.S. 506 (2002).

The Amended Complaint here alleged that the defendant law firm, in the course of seeking to collect a $4,700 legal bill owed by Petitioners entered into a succession of conspiracies with public officials, including court personnel and two judges, to deprive Petitioners of federally protected rights to equal protection of the laws, due process and freedom from racial discrimination.[1]

The other conspiracy allegations are that: (1.) the Respondent law firm conspired with court personnel to cause a default judgment to be entered against Petitioners for the legal fee when all involved knew that Petitioners were trying their best, *pro se*, to dispute, litigate and appeal the fee claim, and (2.) After obtaining the default judgment Respondent conspired with court personnel to have a levy issued on the default judgment and a sheriff's sale under that judgment for $6,020.00 whereby a house and lot owned by Petitioners was valued by the Sheriff himself at $199,000.00 was sold to a third party buyer for $6,000.00 and to have that sheriff's sale ratified by the state court.

The District Court below conceded that the plaintiffs could encounter discrimination based upon their race, quoting an entire paragraph from the Amended Complaint.

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[1] The first conspiracy alleged related to some earlier Landlord Tenant Commission proceedings and is not argued here.

But that did not deter him from dismissing the case. He stated in his Memorandum:

II. The Fourth Circuit's Decision is in Direct Conflict with Binding Precedent of This Court.

Many courts across the country are imposing heightened pleading standards to dismiss cases they don't want to hear (see detailed discussion below). But among the circuit courts, only the Fourth Circuit expressly states that it does not believe itself bound by the precedents of this Court requiring that it abandon its imposition of heightened pleading requirements in certain cases.

Ever since 1938 Rule 8(a)(2) has meant that a plaintiff must put the defendant on notice of the nature of his action, but no more than this is required. *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Fact pleading, a pre-1938 feature of code practice, has long since been abandoned in view of post-complaint "discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues." *Id.* at 47-48.

Seventeen years after *Conley*, in *Scheuer*, another civil rights action, the Court again cautioned lower federal courts against the too-hasty dismissal of complaints based on their preliminary sense, like the District Court in this case, that recovery was "very remote." 416 U.S. at 236. But whether recovery is likely or not, the Court said, "is not the test." *Id.* Rather, "the complaint should be construed favorably to the pleader," *Id.*, and allowed to proceed through discovery and then through summary judgment or trial. *Id.* at 250. This Court reiterated that dismissal for failure to state a claim should only occur when "it appears

beyond doubt that the plaintiff can prove no set of facts in support of his claim." *Id.* at 236, quoting *Conley*, 355 U.S. at 45-46.

Despite the holdings in *Conley* and *Scheuer*, a number of lower federal courts continued to hold civil rights plaintiffs to a higher pleading standard than otherwise required by Rule 8(a)(2). In 1993, the Court again held that any such heightened pleading requirement was improper. *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993):

> "We think that it is impossible to square the 'heightened pleading standard' . . . with the liberal system of 'notice pleading' set up by the Federal Rules." *Id.* at 168.

In 2002, in *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002) the Court again held that heightened pleading requirements must not be imposed on plaintiff in civil cases in the federal courts:

> Furthermore, imposing the Court of Appeals' heightened pleading standard in employment discrimination cases conflicts with Federal Rule of Civil Procedure 8(a)(2), which provides that a complaint must include only "a short and plain statement of the claim showing that the pleader is entitled to relief." Such a statement must simply "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims. See *id.*, at 47-48; *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163,

168-169 (1993). "The provisions for discovery are so flexible and the provisions for pretrial procedure and summary judgment so effective, that attempted surprise in federal practice is aborted very easily, synthetic issues detected, and the gravamen of the dispute brought frankly into the open for the inspection of the court." 5 C. Wright & A. Miller, Federal Practice and Procedure § 1202, p. 76 (2d ed. 1990).

Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited exceptions. Rule 9(b), for example, provides for greater particularity in all averments of fraud or mistake. This Court, however, has declined to extend such exceptions to other contexts. In *Leatherman* we stated: "[T]he Federal Rules do address in Rule 9(b) the question of the need for greater particularity in pleading certain actions, but do not include among the enumerated actions any reference to complaints alleging municipal liability under § 1983. *Expressio unius est exclusio alterius.*" 507 U.S., at 168. Just as Rule 9(b) makes no mention of municipal liability under Rev. Stat. § 1979, 42 U.S.C. § 1983 (1994 ed., Supp. V), neither does it refer to employment discrimination. Thus, complaints in these cases, as in most others, must satisfy only the simple requirements of Rule 8(a).

(Footnotes omitted.)

But the Fourth Circuit does not agree.

In *Bass v. E. I. DuPont de Nemours & Co*, 324 F.3d 761 (4th Cir. 2003) that Circuit Court said:

On appeal, Bass argues that she was not required to plead facts in support of her hostile

> work environment claim. The Supreme Court has recently admonished that the requirements of notice pleading are not onerous. *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002). In *Swierkiewicz v. Sorema*, the Court held that a complaint in an employment discrimination lawsuit need not allege specific facts establishing a prima facie case of discrimination. *Id.* at 510-11. In other words, a plaintiff is not charged with "forecast[ing] evidence sufficient to prove an element" of her claim. *Iodice*, 289 F.3d at 281 (emphasis omitted). *Our circuit has not, however, interpreted* ***Swierkiewicz*** *as removing the burden of a plaintiff to allege facts sufficient to state all the elements of her claim.* See *Dickson v. Microsoft Corp.*, 309 F.3d 193, 213 (4th Cir. 2002) ("[T]he Supreme Court's holding in *Swierkiewicz v. Sorema* did not alter the basic pleading requirement that a plaintiff set forth facts sufficient to allege each element of his claim." (internal citation omitted)); *Iodice*, 289 F.3d at 281. (Emphasis added.)
>
> These cases reject Bass' contention. While a plaintiff is not charged with pleading facts sufficient to prove her case, as an evidentiary matter, in her complaint, a plaintiff *is* required to allege facts that support a claim for relief.

The Fourth Circuit's *per curiam* opinion even attempts to give lip service to the test set forth in Conley, saying "We must . . . recognize that dismissal is inappropriate unless it appears *beyond certainty* that plaintiff would be entitled to no relief under any state of facts that could be proved in support of the claim. (Emphasis added.) Even the Fourth Circuit can hardly expect a plaintiff to make *anything* appear true *beyond certainty*. This is

clearly a garbled attempt to paraphrase this Court's language in *Conley*:

> " . . . unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

While this slip might be termed a simple drafting or typographical error, it also might be an indication of something more serious: including references to precedents that "ought" to appear in an opinion, without seriously considering them. The Fourth Circuit went on to ignore the Kants' many allegations of harmful, race-based conspiracy and, referring to the allegations in the Amended Complaint, said: " . . . we find that they assert conclusory allegations, *unsupported by any averment of facts*." (Emphasis added.)

Under *Conley*, *Scheuer*, *Leatherman* and *Swierkiewicz* a plaintiff is required to give fair notice of the nature of the claim but is not required to plead any facts at all nor the "elements" of any claim as a precondition to getting his or her civil case heard by a United States District Court.

That this Petition's statements of serious and wider public need for the granting of certiorari in this case, apart from the wrong done to Petitioners here, has been authoritatively expressed by a United States District Judge in the Fourth Circuit who eloquently complains that his court is required to do injustice to plaintiffs because district courts are bound to follow the Fourth Circuit's heightened pleading standards, which that judge finds to be clearly in violation of this Court's rule in *Swierkiewicz*:

> The Supreme Court has recently announced that the elements of a prima facie case are not to be treated as a heightened pleading standard. *Swierkiewicz v. Sorema N.A.*, 534 U.S.

506, 510-11, 122 S. Ct. 992, 997, 152 L. Ed. 2d 1 (2002) (finding that a prima facie case is an evidentiary standard, not a pleading requirement).[2] The Court held that plaintiffs are not required to allege facts in support of each element of a prima facie case at the pleadings stage. *Id.* at 511, 122 S. Ct. at 997. Rather, in virtually all civil actions, the Court concluded that a plaintiff's complaint need only give defendants notice of the claim, as mandated by Rule 8(a)(2). *Id.* at 513, 122 S. Ct. at 998. "This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." *Id.* at 514, 122 S. Ct. at 998 (citing *Conley*, 355 U.S. at 47-48, 78 S. Ct. at 103).

Notwithstanding the language of *Swierkiewicz*, Defendants argue that Plaintiff is required to allege facts in support of each element of a prima facie Title IX case. In support of this position, Defendants cite *Bass v. E.I. DuPont de Nemours & Co.*, a decision rendered by the Fourth Circuit less than one year after *Swierkiewicz*, 324 F.3d 761 (4th Cir.), cert. denied, ___ U.S. ___, 157 L. Ed. 2d 253, 124 S. Ct. 301 (2003). In *Bass*, the

[2] Although *Swierkiewicz* was decided in the context of alleged race and age discrimination in violation of Title VII and the Age Discrimination in Employment Act, the holding is applicable to this case, which alleges a violation of Title IX. Federal courts routinely look to cases decided under Title VII and apply a similar analysis under Title IX. See, e.g., *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60, 75, 112 S. Ct. 1028, 1037, 117 L. Ed. 2d 208 (1992) (relying on *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64, 106 S. Ct. 2399, 2404, 91 L. Ed. 2d 49 (1986), a Title VII case, in determining that sexual harassment constitutes discrimination); *Yusuf v. Vassar Coll.*, 35 F.3d 709, 714 (2d Cir. 1994); Mabry v. State Bd. of Cmty. Colls. & Occupational Educ., 813 F.2d 311, 316-17 (10th Cir. 1987).

Fourth Circuit upheld dismissal of a Title VII claim under Rule 12(b)(6) finding that the plaintiff failed to allege facts sufficient to support two of the four prima facie elements necessary to her hostile work environment claim. *Id.* at 765. The court stated "our circuit has not . . . interpreted *Swierkiewicz* as removing the burden of a plaintiff to allege facts sufficient to state all the elements of her claim." *Id.* (citing *Dickson v. Microsoft Corp.*, 309 F.3d 193, 213 (4th Cir. 2002) and *Iodice v. United States*, 289 F.3d 270, 281 (4th Cir. 2002)).

With this holding, the Fourth Circuit seems to avoid the clear purpose of *Swierkiewicz*, which was to ensure that all ostensibly meritorious suits be allowed to proceed to discovery once defendants are put on notice of the claim brought and the general facts supporting it. *Swierkiewicz*, 534 U.S. at 510-11, 122 S. Ct. at 997.

In rejecting the prima facie case requirement as a pleading standard, the *Swierkiewicz* Court noted that plaintiffs may succeed on a discrimination claim even without facts to support each element of a prima facie case, provided some evidence of direct discrimination exists.

> Under [a] . . . heightened pleading standard, a plaintiff without direct evidence of discrimination at the time of his complaint must plead a prima facie case of discrimination, even though discovery might uncover such direct evidence. It thus seems incongruous to require a plaintiff, in order to survive a motion to dismiss, to plead more facts than he may ultimately need to prove to succeed on the merits if direct evidence of discrimination is discovered.

Id. at 511-12, 122 S. Ct. at 997.

The role of the prima facie case requirement is to set forth burdens of evidentiary production, a stage which must necessarily follow, rather than precede, discovery. *Id.* at 510-11, 122 S. Ct. at 997. It would be inconsistent with the spirit of the Rule 8 notice pleading standard to require plaintiffs to plead facts in support of each prima facie element before discovery takes place. *Id.* at 512, 122 S. Ct. at 997-98 ("Before discovery has unearthed relevant facts and evidence, it may be difficult to define the precise formulation of the required prima facie case. . . . Given that the prima facie case operates as a flexible evidentiary standard, it should not be transposed into a rigid pleading standard for discrimination cases.").

The Supreme Court granted certiorari in *Swierkiewicz* to resolve a split among the Circuits regarding the appropriate pleading standard. 534 U.S. at 509-10 & n.2, 122 S. Ct. at 996 & n.2. Formerly, the Second and Sixth Circuits applied the heightened pleading standard now effectively subscribed by the Fourth Circuit in *Bass*, requiring civil rights plaintiffs to allege facts constituting a prima facie case. See, e.g., *Swierkiewicz v. Sorema, N.A.*, 2001 U.S. App. LEXIS 3837, No. 00-9010, 2001 WL 246077, at *1-2 (2d Cir. Mar. 12, 2001); *Jackson v. Columbus*, 194 F.3d 737, 751 (6th Cir. 1999). Conversely, the Seventh, Eighth, and D.C. Circuits applied the more lenient Rule 8 notice pleading standard. See, e.g., *Sparrow v. United Air Lines, Inc.*, 342 U.S. App. D.C. 268, 216 F.3d 1111, 1113-14 (D.C. Cir. 2000) (finding that a plaintiff need not make out a prima facie case of discrimination to avoid dismissal of claim for employment discrimination); *Bennett v. Schmidt*, 153 F.3d 516,

518 (7th Cir. 1998) (same); *Ring v. First Interstate Mortgage, Inc.*, 984 F.2d 924, 926 (8th Cir. 1993) (same, but rendered in the context of a housing discrimination claim).

This court's dilemma is that it believes the Supreme Court resolved this split in favor of applying the lower pleading standard prescribed by Rule 8.[3] By continuing to apply a heightened pleading standard after *Swierkiewicz*, the Fourth Circuit is at odds with the Supreme Court's clear pronouncement that all elements of a prima facie case need not be supported with factual pleadings in order to survive a motion to dismiss. Compare *Swierkiewicz*, 534 U.S. at 510-11, 122 S. Ct. at 997 (finding that a "prima facie case relates to the employee's burden of presenting evidence that raises an inference of

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[3] The Second and Sixth Circuits now apply the lowered pleading standard set forth in *Swierkiewicz*. See *Phillip v. University of Rochester*, 316 F.3d 291, 298-99 (2d Cir. 2003) (finding that "a Title VII plaintiff need not set forth circumstances supporting an inference of discrimination in order to survive a Rule 12(b)(6) motion"); *Jackson v. Crosset Co.*, No. 01-6262, 2002 WL 486390, at *1 (6th Cir. Mar. 7, 2002) (vacating and remanding a district court decision that required plaintiff to allege facts in support of each element of a prima facie discrimination claim); see also *O'Connor v. Northshore Int'l Ins. Servs.*, 61, Fed. Appx. 722, No. 01-1547, 2003 WL 21068432, at *1 (1st Cir. April 11, 2003) (per curiam) ("Swierkiewicz held that a Complaint in an employment discrimination lawsuit need not set out the elements of a prima facie case . . . in order to survive a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6)."); *Wyatt v. Terhune*, 315 F.3d 1108, 1118 (9th Cir. 2003) (finding that the notice pleading standard " 'applies to all civil actions, with limited exceptions' ") (quoting *Swierkiewicz*, 534 U.S. at 513, 122 S. Ct. at 998); *Gavura v. Pennsylvania State House of Reps.*, 55 Fed. Appx. 60, No. 00-1279, 2002 WL 31781092, at *3 (3d Cir. Dec. 13, 2002) ("As the United States Supreme Court recently has confirmed [in Swierkiewicz], complaints in employment discrimination cases must satisfy only the simple requirements of Rule 8(a).").

discrimination. . . . This Court has never indicated that the requirements for establishing a prima facie case . . . also apply to the pleading standard that plaintiffs must satisfy in order to survive a motion to dismiss.") (internal citations omitted), with *Bass*, 324 F.3d at 765 (setting forth the four elements of a prima facie case and upholding lower court's grant of defendant's 12(b)(6) motion because plaintiff "failed to allege facts sufficient to support at least the second and third elements of her hostile work environment claim").

The Fourth Circuit's apparent departure from *Swierkiewicz* has also been noted by another court in this circuit, the District of Maryland, which, when finding that a plaintiff should be granted leave to amend his complaint, added in a footnote:

> The Fourth Circuit's distinction between facts sufficient to prove a case as an evidentiary matter versus facts sufficient to support a claim for relief is unclear. While the Supreme Court suggested that courts should not consider the elements of a prima facie case [at the 12(b)(6) stage], the Fourth Circuit seems to have done precisely that in affirming dismissal of a hostile work environment claim in *Bass*. . . . There is an apparent tension between *Bass* and *Swierkiewicz*. Therefore, it would be advisable for plaintiff to be as particular as reasonably possible when making his allegations in his amended complaint.

Radbod v. Wash. Suburban Sanitary Comm'n, 2003 U.S. Dist. LEXIS 13734, No. Civ.

JFM-03-309, 2003 WL 21805288, at *4 n.5 (D. Md. July 14, 2003). Other district courts in the Fourth Circuit, while not directly addressing the tension between the two decisions, have followed *Swierkiewicz*. See *Gottesman v. J.H. Batten, Inc.*, 286 F. Supp. 2d 604, 611-12 (M.D.N.C. 2003) (stating that plaintiff alleging discrimination need not plead specific facts to support each element of a prima facie case); *Fletcher v. Tidewater Builders Ass'n*, 216 F.R.D. 584, 589 (E.D. Va. 2003) (same); *Jackson v. Blue Dolphin Communications of N.C., L.L.C.*, 226 F. Supp. 2d 785, 789 (W.D.N.C. 2002) (same); cf. *Miller v. Washington Workplace, Inc.*, No. Civ. 03-1110-A, 2004 WL 60698, at *5 (E.D. Va. Jan. 8, 2004) (apparently concluding that the pleading standards applied in *Bass*[4] and *Swierkiewicz* are equivalent). But see *Brown v. Flowers*, 297 F. Supp. 2d 846, 2003 U.S. Dist. LEXIS 23235, No. 1:02CV00862, 2003 WL 23028438, at 4 (M.D.N.C. Dec. 12, 2003) (applying the heightened pleading standard mandated by *Bass* and noting that "the Fourth Circuit does not read *Swierkiewicz* as removing a plaintiff's burden to set forth facts sufficient to allege each element of his claim"); *Seaton v. Owens*, 2003 U.S. Dist. LEXIS 22298,

[4] In discussing the relevant pleading standard, the *Miller* court cites a case identified as *Chaplin v. DuPont de Nemours & Co.*, 324 F.3d 761 (4th Cir. 2003), rather than *Bass v. E.I. DuPont de Nemours & Co.*, 324 F.3d 761 (4th Cir. 2003). *Chaplin* and *Swierkiewicz* are both cited for the proposition that "an employment discrimination plaintiff need not allege specific facts establishing a prima facie case of discrimination [at the 12(b)(6) stage]." This court concludes that the reference to *Chaplin* was actually intended to identify *Bass*, since the citation given for *Chaplin* matches that of *Bass*, West Publishing treats the *Chaplin* citation in *Miller* as a reference to *Bass*, and no opinion in a case named *Chaplin v. DuPont de Nemours & Co.* has ever been posted on Westlaw.

> No. 1:02CV00734, 2003 WL 22937693, at *2 (M.D.N.C. Dec. 8, 2003) (same).
>
> However, this court is bound to follow the Fourth Circuit's interpretation of Swierkiewicz. See Hart v. Massanari, 266 F.3d 1155, 1175 (9th Cir. 2001) ("A district court bound by circuit authority . . . has no choice but to follow it, even if convinced that such authority was wrongly decided."); see also Odom v. S.C. Dep't of Corr., 349 F.3d 765, No. 02-7086, 2003 WL 22718446, at *9 (4th Cir. Nov. 19, 2003) (Luttig, J., dissenting) (noting that a court's failure to follow binding precedent "render[s] principled predictions as to the [law] in our circuit . . . all but impossible"). As was clearly stated in Bass, plaintiffs bringing discrimination claims in the Fourth Circuit must plead facts sufficient to support each element of a prima facie case. Bass, 324 F.3d at 765 ("Our circuit has not . . . interpreted Swierkiewicz as removing the burden of a plaintiff to allege facts sufficient to state all the elements of her claim."). Despite its failure to resolve the evident tension between Bass and Swierkiewicz, this court will now consider whether Plaintiff's claims are sufficient under the heightened pleading standard mandated by the Fourth Circuit.

But the Court of Appeals for the Fourth Circuit simply does not agree.

That is ground for issuing a writ of certiorari in this case.

III. The Fourth Circuit's Decision Conflicts With Precedent In Other Courts of Appeals.

Other circuits have accepted (albeit slowly) this Court's prohibition of heightened pleading requirements in federal civil cases.

An example is *Walker v. Thompson*, 288 F.3d 1005 (7 Cir. 2002):

> The district judge dismissed the suit for failure to state a claim. She based dismissal of the first of the plaintiff's charges on alternative grounds: that the complaint failed to allege an overt act, and that a federal suit complaining of the duration of a prisoner's confinement must be brought under the habeas corpus statute. The second ground is of course solid, but the first is not. As the Supreme Court has recently reaffirmed, *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 122 S. Ct. 992, 995, 152 L. Ed. 2d 1 (2002), and we have held time and again, most recently in *Higgs v. Carver*, 2002 U.S. App. LEXIS 5617, No. 01-1559, 2002 WL 481227 at *2 (7th Cir. Apr. 1, 2002), and *Beanstalk Group, Inc. v. AM General Corp.*, 283 F.3d 856, 2002 WL 406985, at *6 (7th Cir. 2002), there is no requirement in federal suits of pleading the facts or the elements of a claim, with the exceptions (inapplicable to this case) listed in Rule 9. Hence it is enough in pleading a conspiracy merely to indicate the parties, general purpose, and approximate date, so that the defendant has notice of what he is charged with.
>
> * * *
>
> Cases such as *Pangburn v. Culbertson*, 200 F.3d 65, 72 (2d Cir. 1999); *Dwares v. City of New York*, 985 F.2d 94, 99-100 (2d Cir. 1993); *Polur v. Raffe*, 912 F.2d 52, 56 (2d Cir. 1990), and *Zemsky v. City of New York*, 821 F.2d 148, 151 (2d Cir. 1987) (and our own *Kunik v. Racine County*, 946 F.2d 1574, 1580 (7th Cir. 1991), and *Dieu v. Norton*, 411 F.2d 761, 763 (7th Cir. 1969)), which say that "conclusory allegations" of conspiracy,

> or allegations that fail to mention an overt act, are not enough to withstand a motion to dismiss cannot be squared with either *Swierkiewicz* or our recent decisions; we note that in *Swierkiewicz* the Supreme Court was reversing the Second Circuit – the author of the principal cases that require allegation of the overt act.

Thus, a conflict exists among the circuits, between those circuits which are following this Court's teachings as to notice pleading and the Fourth Circuit, which is not.

CONCLUSION

A Writ of Certiorari should be issued to review the judgment and order of the United States Court of Appeals for the Fourth Circuit in this case.

Respectfully submitted,

HENRY ST. JOHN FITZGERALD
2200 Wilson Boulevard,
Suite 800
Arlington, Virginia 22201
Telephone (703) 525-8753
Counsel for Petitioners

UNITED STATES COURT OF APPEALS

for the

Fourth Circuit

NO. 03-1886
CA-02-2371-WMN

CHANDER KANT; ASHIMA K. KANT

Plaintiffs-Appellants

v.

BREGMAN, BERBERT & SCHWARTZ, L.L.C.

Defendant-Appellee

Appeal from the United States District Court for the District of Maryland at Greenbelt

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In accordance with the written opinion of this Court filed this day, the Court affirms the judgment of the District Court.

/s/ Patricia S. Connor
CLERK

PER CURIAM:

Chander and Ashima Kant appeal the district court's order dismissing their civil rights complaint for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6). We review a district court's dismissal for failure to state a claim de novo. Duckworth v. State Admin. Bd. of Election Laws, 332 F.3d 769, 772 (4th Cir. 2003). We must accept as true the facts alleged in the complaint, view them in the light most favorable to the plaintiff, and recognize that dismissal is inappropriate

unless it appears beyond certainty that the plaintiff would be entitled to no relief under any state of facts that could be proved in support of the claim. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Liberally construing the Kants' complaint in compliance with *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), we find that they assert conclusory allegations, unsupported by any averment of facts. Thus, we find that the district court did not err by dismissing the Kants' complaint for failure to state a claim pursuant to Rule 12(b)(6). Accordingly, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CHANDER KANT, *et al.*	:	
v.	:	Civil Action No. WMN-02-2371
BREGMAN, BERNERT, SCHWARTZ & GILDAY, LLC	:	

ORDER

FILED: January 9, 2004

In accordance with the foregoing Memorandum and for the reasons stated therein, IT IS this 18th day of June, 2003, by the United States District Court for the District of Maryland, ORDERED:

1. That Defendant's Motion to Dismiss, Paper No.7, is DENIED as moot;

2. That Defendant's Motion to Dismiss the Amended Complaint, Paper No. 16, is hereby GRANTED;

3. That this action is hereby CLOSED; and

4. That the Clerk of the Court shall mail copies of the foregoing Memorandum and this Order to Plaintiffs and all counsel of record.

/s/ _____
William M. Nickerson
Senior United States District Judge

JUDGMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CHANDER KANT, *et al.*	:	
v.	:	Civil Action No. WMN-02-2371
BREGMAN, BERNERT, SCHWARTZ & GILDAY, LLC	:	

MEMORANDUM

Pro se Plaintiffs, Chander and Ashima Kant, bring this suit against one of the law firms that had represented them in some state court proceedings related to rental property owned by the Kants. This Court very recently addressed a very similar suit filed by the Kants against another of the law firms that had once represented them. *Kant v. Nagle & Zeller, P.C.*, Civil Action No. WMN-02-283. In both suits, the Kants allege that their attorneys conspired with various government officials, court personnel, and even state court judges, to deprive them of their civil rights. Plaintiffs are East Indian and would appear to believe that racial/ethnic animus is the motivation for every action taken concerning them. A brief history of prior litigation is necessary to place the Kants' current claims in their proper context.[1]

The Kants are residents of New Jersey who own rental property in Maryland. Sometime in 1997, one of their tenants reported some defects in the apartment that

[1] This history is gleaned from the Amended Complaint in this action, the pleadings in *Kant v. Nagle & Zeller*, and a Maryland Court of Appeals decision, *Kant v. Montgomery Co.*, 139 Md. App. 158 (2001), which involved the underlying landlord-tenant dispute.

they were renting and requested that the Kants make appropriate repairs. The Kants made some of those repairs, but then sent the tenant a notice to quit and vacate the premises. The tenant then filed a complaint against the Kants in the Montgomery County Office of Landlord-Tenant Affairs of the Department of Housing and Community Development.

A hearing was scheduled in that matter before the Landlord Tenant Commission (the Commission) for February 1998, but the Kants requested, and were granted, a continuance. On the eve of the rescheduled hearing, the Kants hired the firm of Nagle & Zeller to represent them in the proceedings before the Commission. To allow them time to prepare for the hearing, Nagle & Zeller requested a continuance, not knowing that this was the second such request. This second request was denied, the hearing went forward, and the Commission ruled in the tenant's favor. The Kants sought judicial review of that decision in the Circuit Court for Montgomery County and that Court affirmed the decision of the Commission.

The Kants were unhappy with the legal services provided by Nagel & Zeller and, with the exception of the initial retainer, refused to pay for the services rendered. Nagel & Zeller filed suit against the Kants in the District Court for Howard County for the unpaid fees. Judge Louis Becker of the District Court found for Nagel & Zeller. The Kants appealed this decision to the Circuit Court for Howard County, where Judge Raymond Kane affirmed Judge Becker's decision. While this action for fees was working its way through the state courts, the Kants filed a complaint with the Attorney Grievance Commission. Bar Counsel found no violations of the Rules of Professional Conduct on the part of Nagle & Zeller. The Kants then

filed an action against Nagle & Zeller in the Circuit Court for Montgomery County for professional malpractice. The Circuit Court dismissed the case based upon improper venue.

These proceedings against Nagle & Zeller formed the predicate for the Kants' suit in this Court alleging a conspiracy to violate their civil rights. The Kants painted this conspiracy in broad strokes, including as conspirators: two employees of the Department of Housing and Community Affairs, various court personnel, and Judges Becker and Kane. The Kants alleged in the *Kant v. Nagle & Zeller* complaint that Judge Becker "concluded the proceedings [on Nagle & Zeller's complaint for fees] in a highly partisan way, did not permit [the Kants] to point out [Nagle & Zeller]'s false statements, and ruled against [the Kants]." *Kant v. Nagle & Zeller*, Complaint at ¶ 9. They further allege that either Nagle & Zeller or one of the Department of Housing and Community Affairs employees, "were in improper contact with Judge Becker or his law clerk leading to his adverse judgment." *Id.* The Kants also alleged Nagle & Zeller "was in improper contact with Judge Kane's staff and Circuit Court's officials too." *Id.* Nagle & Zeller moved to dismiss the suit before this Court on the ground that the Kants had provided no facts upon which to base their claim that Defendant either "neglected to prevent interference," or "conspired to interfere" with Plaintiffs' civil rights. This Court granted that motion on October 7, 2002, opining that while the Kant's allegations "might support a claim for legal malpractice . . . [the Kants] cannot bootstrap those claims into a civil rights action without alleging more of a factual basis than what they" alleged in their complaint. *Kant v. Nagle & Zeller*,

October 17, 2002 Memorandum at 6. The Kants did not appeal that decision.

The Kants' current target, Bregman, Berbert, Schwartz & Gilday (BBSG), represented the Kants in the Montgomery County Circuit Court action reviewing the decision of the Landlord-Tenant Commission. The Kants first contacted BBSG about two weeks prior to a scheduled June 25, 1999 hearing in the Circuit Court. They retained BBSG on or about June 14, 1999. Before hiring BBSG, the Kants had filed two lengthy memoranda setting out the issues that they believed were important in that action, including "whether the Commission's [] orders against [the Kants] violate their rights," and "whether racial prejudice by the tenant, Department, and the Commission against Asian (Indian) Americans play role in this case?" See Amended Complaint at 4. The Kants also challenged the constitutionality of the portions of the Montgomery County Code governing landlord-tenant relationships. *Id.*

After BBSG entered its appearance in the matter, it filed a hearing memorandum on behalf of the Kants. According to the Kants, BBSG spent 29 hours and 15 minutes preparing the ten page brief. The BBSG attorney that provided the bulk of legal services was Daniel Rigterink. The Kants are critical of Rigterink and BBSG for filing what they viewed as an unnecessary pleading, and for omitting in the hearing memorandum those issues that they had raised in their own memoranda, including their equal protection arguments. The Kants are also critical of BBSG for not permitting Mr. Kant to provide his own oral argument at the hearing.

As with Nagle & Zeller, the Kants refused to pay BBSG's bill for services. BBSG filed suit for those fees in

the District Court for Montgomery County and the case was assigned to Judge Louis Harrington. Judgment was entered against the Kants in the District Court for the full amount of BBSG's claim on February 14, 2001. The Kants appealed that decision to the Circuit Court for Montgomery County on March IS, 2001 and the case was assigned to Judge William Rowan.

When the Kants failed to satisfy the District Court judgment, BBSG obtained a lien against the rental property that was the subject of the original landlord-tenant dispute. Despite the Kants' efforts to post bond and to obtain a release of the property from levy, the house was sold at auction on October 25, 2001.

The Kants brandish the same broad conspiracy brush in this action as they did in their suit against Nagle & Zeller, although in this action, the Kants actually identify four separate conspiracies. First, they allege a conspiracy between Rigterink; Sherry Glazer, counsel for Mongomery County; and the two employees of the Landlord Tenant Commission that investigated the original tenant complaint. The Kants allege that these individuals conspired "1) first to obtain Kants' retainer agreement; ii) then to suppress their equal protection of the laws/equal privileges and immunities under the laws claim before the circuit court; and iii) then to present a huge bill to Kants to discourage them from pursuing the matter further." Amended Complaint at 6. Among the acts that were allegedly in furtherance of this conspiracy was the filing of the brief that omitted their allegation that they were "targeted for special harassment due to their race/ ethnicity." *Id.* at 8.

The Kants name as conspirators in the second alleged conspiracy: BBSG; the Clerk for the District Court of Montgomery County; and Judge Harrington. The goal of this conspiracy was to "obtain/grant a default judgment on [BBSG's] claim [for its fees]." One of the acts that the Kants identify as an act in furtherance of this conspiracy is the Clerk's decision to schedule a hearing at 8:00 in the morning. "The clerk knew that [the Kants] reside in New Jersey, while [BBSG] was located in Bethesda, MD. Yet, he fixed the case for 8:00 a.m. in Rockville, MD, rather than at the alternative time of 12:30 p.m. Scheduling the case for 8:00 a.m. when an alternative time of 12:30 was available, itself violates equal protection of laws for out-of-state defendants." *Id.* at 10. Judge Harrington demonstrated his membership in the conspiracy, according to the Kants, by exclaiming "Terrific" when Rigterink informed him that he had already calculated the appropriate amount for the interest portion of BBSG's claim. *Id.* at 11. The Kants fault Rigterink for not informing Judge Harrington that they had requested a continuance, although they also claim that Judge Harrington was well aware of the request, but fault him for not granting it. *Id.*

The third conspiracy in the Kants' view was between BBSG and the District Court Clerk. "The object of this conspiracy was to have the district court (rather than the circuit court) issue the writ of execution, and to delay notifying Kants of this process as much as possible (so that Rigterink could obtain the writ from the clerk without any opposition from the Kants), and to deprive Kants equal protection of the laws or of equal privileges and immunities under the laws." *Id.* at 13. Acts in furtherance included Rigterink's failure to serve a copy of his request to transmit to the circuit court a certified notice of lien

judgment, and the Clerk's failure to serve a copy of the docket entries on the Kants.

The Kants' fourth and last alleged conspiracy includes the most conspirators, including: BBSG, the Montgomery County Sheriff, the local Federal Express office, Judge Rowan, and Judge Rowan's law clerk. *Id.* at 13. The object of this conspiracy "was to force a Sheriff-sale of Kants' property, and not release it from levy even after the bond had been posted." *Id.* at 16. Many of the acts done in furtherance of this conspiracy were acts of Judge Rowan and they include his failure to act on pending motions with sufficient speed. Federal Express entered into the conspiracy, according to the Kants, when "Rigterink and Sheriff evidently contacted the local Federal Express office and had them delay delivery to the court that morning" so that the Kants' bond would not arrive at the court until after the Sheriff's sale. *Id.* at 15. Rigterink's conspiratorial actions include: "asking for the [Circuit Court's] ratification of the sale, oppos[ing] interlocatory appeal of the Circuit Court's denial of the motion to quash attachment, and oppos[ing] second interlocatory appeal of Circuit Court's ratification of the sale." *Id.* at 16.

Based upon this series of events, the Kants brought their instant action alleging violations of the civil rights under 42 U.S.C. §§ 1985(3), 1986, 1983, 1981, and 1982.[2] Defendant argues that the Complaint, even as amended, fails to provide any specific factual support for either the

[2] The Kants also attempt to assert a claim under 28 U.S.C. § 1331. Section 1331 is simply the jurisdictional statute that gives the district courts original jurisdiction over civil actions arising under the laws of the United States. It does not supply an independent basis for a cause of action.

existence of any conspiracy, or any racial/ethnic animus on the part of the conspirators. As each of the claims requires proof of either the "meeting of the minds" to form a conspiracy, and/or the presence of racial or ethnic animus, all of the claims must be dismissed. The Court agrees. While the Amended Complaint is ripe with conclusory language regarding the existence of numerous conspiracies and racial animus on the part of almost everyone that came into contact with the Kants, the facts alleged do not support those conclusions.

The types of conduct that the Kants identify as acts in furtherance of the various conspiracies highlight the conclusory nature of the amended complaint. The Kants conclude that, because Federal Express did not deliver a package until 11:17 in the morning, Rigterink and/or the Sheriff "evidently" contacted the local Federal Express office and had them delay delivery. Because a court clerk scheduled a hearing for 8:00 in the morning, the Kants conclude that he must have done so in order to violate their civil rights. When Judge Harrington remarked that it was "terrific" that Rigterink had appeared in court prepared, having calculated in advance the amount of the judgment that he was seeking, the Kants conclude after reading the transcript that this remark shows that Judge Harrington "was angry and biased" toward Kants." *Id.* at 11. The Kants conclude that, because Judge Rowan did not issue decisions on matters in their case within the time frame that they believe appropriate, he was intentionally trying to deprive them of their civil rights.

As to the motivation of the conspirators, the following are the only "facts" upon which the Kants base their conclusion that all of the individuals identified in their

Amended Complaint were motivated by invidious racial or ethnic animus:

> Kants' race, descent, ancestry, and ethnicity, is (East) Indian (Indian-American). They are members of a protected class, i.e., Indian-Americans. None of the other persons cited in this Complaint has (East) Indian race, descent, ancestry, and ethnicity, and upon information and belief, all of them are white. American society, like many other societies all over the world, has had racial/ethnic animus towards minorities for most of its history. That is, it has looked-down upon minorities, treated them as inferior, and extracted utmost output from them without giving them equal rights. How it treated blacks is well known. Now, it is the turn of the new minorities, like Indian-Americans. Many whites, like most of those cited in this Amended Complaint, are motivated by racial or class-based, invidious discrimination directed against Indian-Americans. Even though they may not openly admit it, they would like to keep Indian-Americans subservient to them, treat them as second class citizens, and rub-in their inferior social, political, and legal status. The actions complained-of below were taken by various persons involved because of their animus based on race/ethnicity.

Id. at 6.

Undeniably, there are individuals who hold hostile attitudes toward those of Indian descent. It strains credulity, however, to conclude that each and everyone of these independent individuals identified by the Kants in this Amended Complaint and in the *Kant v. Nagle & Zeller* complaint, including four different state court judges, all held racist views such that they united together for the

purpose of depriving the Kants of their civil rights. While the Court must take the allegations in a complaint as true for the purpose of deciding a motion to dismiss, it is not compelled to embrace any conclusion, no matter how implausible, that a plaintiff might seek to draw from those allegations. *See Cardwell v. Sears Roebuck and Co.*, 821 F.Supp. 406, 409 (D.S.C. 1993) ("It is the duty of this court to seek the truth from the facts forming the basis of the plaintiff's claims and not to be beguiled by the conclusory allegations of the pleadings. Bald conclusions unsupported by the facts are insufficient to state a claim.") (citations omitted).

If the Kants take issue with the manner in which their attorneys represented their interests, the proper course would be to bring suits for malpractice against those attorneys. Similarly, if legal or procedural errors were committed by the judges that heard either the matters related to the underlying landlord-tenant dispute or the disputes between the Kants and their former attorneys, or if those judges somehow abused their discretion, the proper course to review those decisions is through the state appellate courts. It would appear that the Kants have sought to make use of many of these remedies. *See, Kant v Bregman*, No. 533, Sept. Term 2002, 372 Md. 430 (table) (December 23, 2002) (denying petition for certiorari); *Kant v. Montgomery Co.*, No. 306 Sept. Term 2002, 371 Md. 70 (table) (September 12, 2002) (denying petition for certiorari); *Kant v. Nagle*, No. 100 Sept. Term 2002, 369 Md. 660 (table) (July 18, 2002) (denying petition for certiorari). As previously noted in this Court's decision in *Kant v. Nagle & Zeller*, however, the Kants cannot bootstrap claims of malpractice into civil rights claims without some factual basis. Nor can they employ assertions of

judicial error to bolster civil rights claims against their litigation opponents without some factual showing of a discriminatory intent.

For these reasons, the Court will grant Defendant's motion and dismiss the complaint. A separate order will issue.

/s/ _____
William M. Nickerson
Senior United States District Judge

Dated: June 18, 2003

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 03-1886
CA-02-2371-WMN

CHANDER KANT; ASHIMA K. KANT

Plaintiffs-Appellants

v.

BREGMAN, BERBERT & SCHWARTZ, L.L.C.

Defendant-Appellee

ORDER

FILED February 19, 2004

The Appellants have filed a petition for rehearing.

The Court denies the petition for rehearing.

Entered for a panel comprised of Judge Michael, Judge Williams, and Judge Motz.

For the Court,

/s/ Patricia S. Connor
CLERK

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

June 15, 2004

Mr. Chander Kant
19 Birchwood Drive
Short Hills, NJ 07078

Re: Chander Kant and Ashima K. Kant
v. Bregman, Berbert & Schwartz, LLC
Application No. 03A926

Dear Mr. Kant:

The application for a further extension of time in the above-entitled case has been presented to The Chief Justice, who on June 15, 2004 extended the time to and including July 18, 2004.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Suter, Clerk

by /s/ Gail Johnson
Gail Johnson
Case Analyst

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

NOTIFICATION LIST

Mr. Chander Kant
19 Birchwood Drive
Short Hills, NJ 07078

Clerk
United States Court of Appeals for the Fourth Circuit
1100 East Main Street
Room 501
Richmond, VA 23219

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CHANDER KANT & ASHIMA KANT 19 Birchwood Drive Short Hills, NJ 07078	*	
Plaintiffs	*	Civil Action No.
V.	*	WMN-02-2371
BREGMAN, BERBERT, SCHWARTZ, & GILDAY, L.L.C. 7315 Wisconsin Avenue, Suite 800W Bethesda, MD 20814	*	
Defendant	*	

AMENDED COMPLAINT

1. This suit alleges conspiracy to interfere and neglecting to prevent interference with Plaintiffs' (Kants') civil rights, deprivation of Kants federal rights including deprivation under-color-of-state-law, violation of Kants rights of equal performance and enjoyment of contracts, and denial of Kants property rights by Defendant. Jurisdiction is specifically conferred on this Court by 28 USCS §§ 1343(a)(1), 1343(a)(2), 1343(a)(3), and 1343(a)(4) with remedial counterparts 42 U.S.C. §§ 1985(3), 1986, 1983, and 1981 and 1982, respectively. Further, 28 USCS § 1331 provides additional jurisdiction for the claim under Count 3 below.

2. Kants are individuals who reside at the above-referenced address. They own two single-family dwellings in Montgomery County, Maryland. Their phone number is 973-258-0956. Their race, descent, ancestry, and ethnicity, is (East) Indian. They are and have been U.S. citizens for

all the period under consideration. None of the other persons cited in this Amended Complaint has (East) Indian race, descent, ancestry, and ethnicity, and upon information and belief, all of them are white.

3. Defendant is a corporate law firm admitted in Maryland. Its telephone number is 301-656-2707. Its name through May 22, 2002 was Bregman, Berbert & Schwartz, LLC.

Background:

4. To focus on the violations cited, a detailed background of this dispute is stated in Appendix to this Amended Complaint. To summarize the Appendix, Barbara Wetherell (Wetherell), tenant of one of Kants' real property complained to the Department of Housing and Community Affairs (Department) of Montgomery County Government that Kants had engaged in retaliatory actions due to her request for repairs. This complaint was assigned to Michael T. Denney (Denney), an employee of the Department and a staff-member of the Landlord-Tenant Commission (Commission) of Montgomery County, with whom Kants already had had an encounter. Denney and another employee of the Department, Whitt, thwarted Kants' efforts to reconcile with the tenant, violated many Landlord-Tenant rules, and discriminated against Kants in the provision of municipal services. The Commission scheduled hearings for 6:00 p.m. on May 12, 1998 in Rockville, Maryland. On Kants' new attorney's, Craig Zaller (Zaller), advice that Kants did not have to come down to Rockville, Maryland from New Jersey for the hearing, as the Commission would postpone hearing on his request (that he needed time to prepare for the hearing),

Kants did not appear for the hearing. Zaller also did not appear before the Commission. The Commission held the hearing as scheduled, and denied Zaller's continuance motion on the ground that Zaller did not personally appear before the Commission to argue for it.

5. The Commission gave its decision on December 16, 1998 – and awarded a judgment of $4,502 against the Kants.[1] This amount represented:

Attorney's fees	$1,000
Moving costs	$982
Reduced value of leasehold	$2,520
Total	$4,502[2]

[1] On May 12, 1998, the Commission also heard the complaint of Kants' other property's tenants of alleged unjust withholding from the security deposit. The tenant had alleged that withholding about $400 from the security deposit for Kants' expenditure on carpet shampooing and repair for damage to walls was improper. On November 16, 1998, the Commission awarded these tenants $1,708, the amount claimed plus a three times penalty. Kants have paid this amount to the said tenants. Zaller continued to work for Kants through January 27, 1999. Between the hearing date of May 12, 1998 and December 16, 1998, he did not do anything to try to get Kants' evidence in the record. For example, he could have asked for a reopening of the hearing or requested rehearing, he could have requested reconsideration of the continuance motion's denial, and he could have asked for a transcript of the May 12, 1998-hearing and submitted Kants' rebuttal evidence under oath. He also did not advise Kants that they could file an action against these County officials under Maryland's Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc., §§ 5-301 *et seq.*

[2] The Commission did not have any evidence that Wetherell actually paid the attorney fees and moving costs. The evidence on attorney fees was a bill for services allegedly rendered during a two-day period in connection with drafting her complaint to the Commission; and that on moving costs was an estimate on moving costs provided by a moving company. The reduced value of leasehold was rebating to Wetherell 15% of rent paid by her during her one-year lease.

Kants filed a petition and memorandum *pro se* with Montgomery County Circuit Court (CC) for a review of the Commission's decision. Wetherell never appeared before CC to defend her award. Montgomery County government sought and obtained intervention status before CC. Its attorney, Sherry Glazer (Glazer), filed many papers including a memorandum to defend Denney and Whitt. Kants, again working *pro se,* also filed a response to the County's memorandum before CC. In this response, they presented the following nine issues for the CC's determination:

I. Did the Department and the Commission treat the Petitioners fairly?

II. Whether the Commission's denial of continuance did substantial justice to Petitioners?

III. Whether the Complainant (Wetherell) was encouraged and instigated to act against Petitioners by the Department?

IV. What should be the standard of review of an *ex parte* decision by an (administrative) agency?

V. Was the Commission's award of damages to the Complainant (Wetherell) justified by the evidence and permitted by the County Code.

VI. Do Commission's other orders against Petitioners violate their rights?

VII. Whether racial prejudice by the tenant, Department, and the Commission against Asian (Indian) Americans play a role in this case?

VIII. Does the way the Department and the Commission handle complaints give excessive powers to a single investigator?

IX. Is the Montgomery County Code governing Landlord-Tenant relations against the Maryland and the U.S. Constitutions?

6. The CC scheduled a hearing of this case for June 25, 1999. Upon scheduling of this hearing, Kants contacted Defendant (Rigterink) on June 11, 1999 to represent them at this hearing. What happened after Kants hired Rigterink will be explained below. At this point, Kants refute an incorrect assertion in Defendants' Motion to Dismiss not refuted above or in the Appendix. Defendant incorrectly asserts that this action is "one in a series of suits that Plaintiffs . . . have filed against lawyers who represented them in connection with their Maryland rental property." Kants were represented by the following four lawyers in connection with their rental properties:

Jeffrey Brown of Bethesda, MD from Feb. 10 to 9:00 a.m. on May 12, 1998.
Craig Zaller of Nagle and Zaller, Columbia, MD from May 12, 1998 to January 27, 1999.
George Meng of Meng and Urey, Upper Malboro, MD from February 16 to April 9, 1999.
Daniel Rigterink of BBSG from June 14 to June 25, 1999.

Kants have not filed any suit against Jeffrey Brown or George Meng (nor have either of them sued Kants). On the other hand, in spite of their clearly unethical conduct, (as outlined both above and below) both Zaller and Rigterink sued Kants.[3] Only after they sued Kants, did Kants file suits against Zaller and Rigterink. Kants filed their suit against Zaller on January 25, 2002. Kants' understanding at that time was that the statute of limitations would toll

[3] Kants lost the suit filed by Zaller against them, and they have paid Zaller the judgment that he obtained.

from January 27, 1999, the last date of billing by Zaller. However, they later on learnt [sic] that limitations would toll from around December 20, 1998, the approximate date they received the Commission's second decision dated December 16, 1998. Kants' complaint against Zaller was barred by the Statute of Limitations, and they did not oppose Zaller's motion to dismiss. Nevertheless, the present suit is not barred by Statute of Limitations. It also raises different and more extensive set of issues. These issues and counts are presented below:

First Count: Claim Under 42 U.S.C. § 1985(3)

7. Defendant alleges in its motion to dismiss that in order to state a claim under 42 U.S.C. § 1985(3), a plaintiff must allege the following four elements:[4]

1. that the defendant did conspire with others;

2. that the conspiracy was for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws;

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[4] Plaintiffs' refrain from responding in kind to Defendant's conclusory and accusatory allegations that "this suit . . . is a transparent attempt to harass BBSG and retaliate against the law firm for successfully suing . . . for unpaid legal fees" (page 1); "fantastic scope of the conspiracy" (page 5); "Complaint is the product of Plaintiffs' frustration and imagination" (page 5); "'conspiracy" is too improbable to be credible" (page 6); "Plaintiffs clearly intend to harass their former attorneys" (page 6); "venting anger at the lawyers" (page 6); "frustration evident in the Plaintiffs' Complaint" (page 6); "spite and desire to harass the attorneys" (page 7); and "claims of conspiracy . . . are: the product of an active imagination and part of a deliberate scheme to harass BBSG and others" (page 16).

3. that one or more conspirators did, or caused to be done, any act in furtherance of the object of the conspiracy;

4. that the plaintiff must have been injured in his person or property or deprived of having and exercising any right or privilege of a citizen of the United States.

Kants first allege element 2 above. As stated in paragraph 2., Kants' race, descent, ancestry, and ethnicity, is (East) Indian (Indian-American). They are members of a protected class, i.e. Indian-Americans. None of the other persons cited in this Complaint has (East) Indian race, descent, ancestry, and ethnicity, and upon information and belief, all of them are white. American society, like many other societies all over the world, has had racial/ethnic animus towards minorities for most of its history. That is, it has looked-down upon minorities, treated them as inferior, and extracted utmost output from them without giving them equal rights. How it treated blacks is well known. Now, it is the turn of the new minorities, like Indian-Americans. Many whites, like most of those cited in this Amended Complaint, are motivated by racial or class-based, invidious discrimination directed against Indian-Americans. Even though they may not openly admit it, they would like to keep Indian-Americans subservient to them, treat them as second class citizens, and rub-in their inferior social, political, and legal status. The actions complained-of below were taken by various persons involved because of their animus based on race/ethnicity. Kants present the other three elements of a conspiracy claim separately for each of the conspiracy alleged.

A. June 1999: Conspiracy between Defendant and Glazer and/or Denney/Whitt:

8. Rigterink is one person to whom everything stated in the previous paragraph applies. Soon after Kants contacted him, he conspired with Glazer and/or Denney/Whitt to subvert Kants' case before the CC. The purposes of this conspiracy were i) first to obtain Kants' retainer agreement; ii) then to suppress their equal protection of the laws/equal privileges and immunities under the laws claim before the circuit court; and iii) then to present a huge bill to Kants to discourage them from pursuing the matter further. He undertook the following acts in furtherance of this conspiracy. He asked for a low retainer (of $1,000) and gave encouraging assurances to Kants that they had good chances of winning. These actions were undertaken to obtain Kants' retainer agreement, and he succeeded in getting the retainer agreement. Kants sent him the retainer and the agreement on June 14, 1999, and emphasized that the case was a matter of principle for them. They wrote in the cover letter:

"As discussed on the phone, this dispute is a matter of principle for us, and we want complete exoneration of all these charges and orders against us. Please contact the County attorney and enter your appearance only if you are willing to work towards this end."

Rather than working to exonerate Kants of all charges and orders, Rigterink sabotaged Kants' case before the CC. He insisted on filing yet another (third) memorandum, and termed it a "hearing memorandum."[5] It turns out that

[5] Defendant asserts on page 3 and in footnote 7 of its Motion to Dismiss that a **hearing memorandum** was required by Maryland Rule 7-207. This is incorrect. A **memorandum** was required by this

(Continued on following page)

Defendant's purpose in this insistence was to suppress Kants' equal protection of the laws/equal privileges and immunities under the laws issues before the CC. Kants asked Defendant to include in the hearing memorandum all the nine issues raised by Kants in their reply memorandum filed with the CC. On June 21, 1999, C. Kant wrote to Rigterink:

"I hope you are planning to include all the nine issues raised in my reply-memorandum in your hearing memorandum. If not, please call me at 973-564-6584.

Rigterink did not call C. Kant. He led Kants to believe that he would include all these nine issues in his memorandum (so that Kants would not terminate his employment). Yet, in actuality he did not include any one of these issues. C. Kant had also questioned the need to file a "hearing memorandum" at all, and had written to Rigterink on June 21, 1999:

"I am wondering if it is necessary to incur the time and expense of preparing a written memorandum. I have already spent an enormous amount of time in preparing various pleadings. These can be summarized, and anything I have missed added, orally at the hearing."

However, Defendant insisted on the hearing memorandum, and filed a ten-page memorandum over Kants' objections and without showing it to the Kants. Between June 11 and June 25, 1999, Rigterink allegedly spent 29 hours and 15 minutes preparing for this hearing, i.e. about

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Rule, and Kants had already filed two memoranda to the CC: an initial 26 pages-long (in single space) memorandum with 107 exhibits, and a 24 pages-long memorandum in reply to the County's memorandum.

three hours each day for ten working days. Rigterink allegedly spent this time on the following activities:

> Review many sets of documents and pleadings sent by Kants.
> Repeatedly confer with C. Kant on the telephone.
> Review transcript of hearing before the commission and its opinion/order.
> Legal research on at least the following: County's administrative procedures and landlord-tenant code, relevant Maryland Rules and Statutes, etc.
> Review Kants' memorandum and exhibits (107 in number) filed with the circuit court.
> Confer repeatedly on the telephone with Glazer.
> Develop legal theories and arguments for hearing.
> Draft and review hearing memorandum and motion for leave to file hearing memorandum.
> Review docket entries and pleadings.

Yet, Rigterink did not include the equal protection of the laws/equal privileges and immunities under the laws issues Kants had raised in hundreds of pages of pleadings, supported by hundreds of exhibits, filed *pro se,* at the CC. At the hearing, Rigterink did not permit C. Kant to provide either testimony or oral argument on Kants' equal protection of the laws/equal privileges and immunities under the laws issues: he reserved oral arguments exclusively to himself. Nevertheless, neither in his memorandum nor in oral arguments did the Defendant raise any of the allegations of unequal protection of the laws/unequal privileges and immunities under the laws issues presented above and in the Appendix. As stated above, Defendant initially (on June 11, 1999) estimated his charges to be $1,000, and asked for a retainer of that amount. On June 29, 2002, Defendant billed Kants an additional $4,745.22. This billing, so soon after asking only a retainer for $1,000,

was done to discourage Kants from pursuing the matter further. Rigterink agreed with Kants that some County officials had targeted Kants for special harassment due to their race/ethnicity. Yet, Defendant neither raise [sic] this issue in his hearing memorandum/oral argument nor advise Kants that they could file an action against these County officials under Maryland's Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc., §§ 5-301 *et seq.*[6]

9. Plaintiffs have explained above that Rigterink conspired with others in June 1999; the motive of this conspiracy was to deprive Kants equal protection of the laws or of equal privileges and immunities under the laws due to their race/etnicity [sic] Rigterink took several acts in furtherance of this objective. Injury to Kants' rights or privileges as a citizen of the United States has also been stated above. Now, Kants enumerate injury to their person or property. The CC affirmed the Commission's decision on July 20, 1999. The Court of Special Appeals of Maryland agreed with CC, and the Court of Appeals of Maryland has denied Kants' petition for a writ of certiorari. Kants have recently paid the said tenant the judgment amount of $4,502. The injury to Kants is emotional damage; this amount of $4.502; expenses incurred in court costs, copying, mailings, and preparing briefs etc; and in legal expenses incurred in trying to defend their civil rights *pro se*.

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[6] Defendant complains in its Motion to Dismiss that no other party that may have been party to this and other conspiracies has been joined in this suit. However, 42 USCS § 1985(3) states " . . . the party so injured in his person or property . . . may have an action . . . against any one or more of the conspirators." Filing an action for damages against only one conspirator, Defendant, is permitted by 42 USCS § 1985(3).

B. February 14, 2001 and before that date: Conspiracy between Defendant, the District Court Clerk, and Judge Harrington:

10. In spite of the clearly unethical conduct by Defendant as outlined above, Defendant kept on asking Kants for payment of its remaining bill of $4,745.22.[7] On October 23, 2000, Defendant filed a suit against Kants for this amount in the district court of Maryland for Montgomery County. Rigterink, the district court clerk, and judge Harrington conspired to obtain/grant a default judgment on this claim. They took the following actions in furtherance of this objective. The district court clerk schedules new cases for hearing either at 8:00 a.m. or at 12:30 p.m. The clerk knew that defendants (of that case), Kants, reside in New Jersey, while the plaintiff (of that case), BBS, was located in Bethesda, MD. Yet, he fixed the case for 8:00 a.m. in Rockville, MD, rather than at the alternative time of 12:30 p.m. Scheduling the case for 8:00 a.m. when an alternative time of 12:30 p.m. was available, itself violates equal protection of laws for the out-of-state defendants.

11. Kants filed a timely "Notice of Intention to Defend." They vigorously contested Rigterink's claim on the grounds both due to excessive billings and due to Rigterink's unprofessional/unethical conduct. They stated in the Notice of Intention to Defend:

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[7] Defendant states in its Motion to Dismiss that Kants never took their dispute regarding fees to the Fee Arbitration Committee of the Bar Association of Montgomery County. However, this Committee cannot go into any ethical violations by the attorney. Kants' complaint against Rigterink was of ethical violations by Defendant (Rigterink).

"This is a law suit filed by a lawyer we had hired. His billings are excessive and unjustified. Further, his conduct was unprofessional and unethical."

This case was assigned to judge Harrington, and was scheduled for 8:00 a.m. on February 14, 2001. On February 13, 2001, C. Kant spoke to judge Harrington's secretary, requested a continuance of the case to 9:15 a.m. that morning, and requested her to call him if the Court denied this request. The reason for this request of continuance for an hour and fifteen minutes was that he was coming from New Jersey to defend him and his wife from this claim, and that even by taking the first Amtrak Metroliner-train from New Jersey, he would be able to reach the Court only at about 9:15 a.m. that morning. He informed Rigterink, also on February 13, 2001, of this continuance request, and requested him to inform the Court that he was on his way if the case was called earlier. However, when C. Kant reached the court, he learnt [sic] that Rigterink had already obtained the judgment on affidavit against Kants. Transcript of the February 14, 2002-hearing has the following passages:

. . . .

Rigterink: I have the interest through today pursuant to the retainer agreement.

Court: Terrific.

. . . .

Court: Tell him I got his message. I'll send him something just momentarily.

Court: All right. That will be as to both Defendants – fifty-three, seventy-eight, thirty-two ($5,378.32), total judgment plus court costs thirty-six dollars ($36.00).

. . . .

These passages show the following: i) judge Harrington expressed exultation on learning that he would be able to impose interest also on Kants easily; ii) He had received C. Kant's request for continuance; iii) he was angry and biased towards Kants. Judge Harrington has passed cases for an hour or an hour and a half on similar requests by white defendants, even if they were locally resident. Judge Harrington got C. Kant's request for continuance but did not have his secretary call him back that he was denying this request, and that C. Kant must reach the court at 8:00 a.m. from New Jersey. He led Kants to believe that he had granted the continuance request. Kants had strongly contested Rigterink's claim in their Notice of Intention to Defend. Yet, judge Harrington gave a judgment on the affidavit. Further, he did not vacate or revise his judgment even after Kants provided evidence that C. Kant was present in the Court that morning. The transcript also reveals that judge Harrington did not ask Rigterink whether C. Kant had informed Rigterink about Kants' request for a short continuance. Nor did Rigterink inform [in violation of his obligation under Rules for Professional Conduct at an *ex parte* hearing] the Court that C. Kant had apprised Rigterink the previous day of this continuance request.

12. Plaintiffs have explained above that Rigterink conspired with others on February 13 and 14, 2001 and before that date; the purpose of this conspiracy was motivated by his racial animus to deprive Kants equal protection of the laws or of equal privileges and immunities under the laws; and that Rigterink took several acts in furtherance of this objective. Injury to Kants' rights or privileges as a citizen of the United States has also been stated above. Kants' appeal of this district court default

judgment is presently pending before the circuit court, and is assigned to Judge Rowan. The injury to Kants' person or property is emotional damage, amount spent in court costs, copying, mailings and preparing memoranda etc; and legal expenses incurred in trying to defend their civil rights *pro se*.

C. March to May 2001: Conspiracy between Defendant and the District Court Clerk:

13. Defendant then entered into a conspiracy with the district court clerk to have the district court (rather than the circuit court) issue a writ of execution, and delay notifying Kants of this process as much as possible. Kants served their notice of appeal on Rigterink on March 12, 2001. Upon receiving the notice of appeal, Rigterink first filed a request with the district court clerk to transmit to the circuit court a certified Notice of Lien of judgment on Kants' real residential property located in Montgomery County, Maryland. In violation of his obligation under Maryland Rules, he did not serve a copy of this request on Kants. Then, he requested and obtained a writ of execution from the district court clerk. He knew, or should have known, that jurisdiction on the judgment had passed to the circuit court with the filing (on March 15, 2001) of the Notice of Appeal. Yet, he obtained this attachment of Kants' real property from the district court clerk on May 7, 2001. Further, only after execution of the writ did the district court clerk transfer the record to the circuit court (on May 11, 2001). Still, in violation of Maryland Rule 7-109, the clerk did not serve a copy of docket entries on

Kants. Nor did it send to Kants a certificate clearly identifying the papers included in the record.[8]

14. All these omissions and violations by Rigterink and the district court clerk were acts in furtherance of their conspiracy motivated by their personal racial/ethnic animus. The objective of this conspiracy was to have the district court (rather than the circuit court) issue the writ of execution, and to delay notifying Kants of this process as much as possible (so that Rigterink could obtain the writ from the clerk without any opposition from the Kants), and to deprive Kants equal protection of the laws or of equal privileges and immunities under the laws. Kants' appeal of this district court judgment is presently pending before the circuit court. Further, (as explained below), Kants' attached property has subsequently been sold, and the circuit court has ratified the sale. Kants have filed another interlocutory appeal with the Court of Special Appeals.[9] The injury to Kants' person or property is emotional damage, amount spent in court costs, copying, mailings and preparing filings etc; and legal expenses incurred in trying to defend their civil rights *pro se*.

D. October 2001 and before that: Conspiracy between Defendant, Sheriff, Federal Express, Judge Rowan, and his Law-Clerk, Drew Cole.

15. The purpose of this conspiracy was to force a Sheriff-sale of Kants' attached property, and not release it

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[8] It later turned out that the record sent to the circuit court had many papers missing relating to lien and the writ of execution.

[9] The first interlocutory appeal to the Court of Special Appeals was against the circuit court's denial of the quashing of attachment.

from levy even after the bond had been posted. Rigterink and others took the following actions in furtherance of this objective motivated by their personal racial/ethnic animus. As stated above, Kants filed on March 15, 2001 with the district court their Notice of Appeal. The appeal was to be decided on record since the amount in controversy was more than $1,000. It was assigned to CC judge Rowan. Kants filed their required memorandum with CC on June 12, 2001; Defendant filed his response on June 18, 2001. Thus, the appeal from the district court's (default) judgment had been ripe for judge Rowan's decision since June 18, 2001. However, even by April 26, 2002 (the date Kants filed their first interlocutory appeal to the Court of Special Appeals), i.e. more than ten months later, judge Rowan had not decided on the underlying appeal. Upon receiving notification of levy from the Sheriff, Kants filed on June 26, 2001 a request with CC to take a decision on the underlying appeal, set aside the district court judgment and release their property from levy. Judge Rowan did not render a decision on this motion until October 17, 2001, and denied it stating that Kants had not posted a bond. However, even after Kants posted the bond fixed by judge Rowan, judge Rowan denied release from levy stating that the bond was received 77 minutes late!

16. The Sheriff scheduled sale of the attached property at 10:30 a.m. on October 25, 2001. During an October 18, 2001-conversation, judge Rowan's law clerk, Drew Cole, informed C. Kant of the October 17, 2001-denial of the levy-dissolution, faxed copy of this order to Kants, and stated that any new motion for release from levy must be sent directly to judge Rowan since he had the file on this case. Accordingly, Kants sent on October 18, 2001 their second motion for release from levy, this time

by posting bond, directly to judge Rowan. The same evening they faxed a copy of this mailing both to the Sheriff and to Rigterink. Judge Rowan received this motion on October 19, 2001. With this motion, Kants attached Sheriff's notice that sale of the property was scheduled for October 25, 2001 at 10:30 a.m. Rigterink filed his response also on October 19, 2001 consenting to release of the property from levy by filing bond. Thus, the motion to release property by filing bond was ripe for judge Rowan's decision on October 19, 2001. Judge Rowan knew at least by October 19, 2001 that the property's sale was scheduled for October 25, 2001 at 10:30 a.m. Yet, he again delayed giving his decision. The effective date of judge Rowan's order fixing amount of the bond was on October 25, 2001 (when this order was entered). This decision required that the bond must be posted by 10:30 a.m. on October 25, 2001.[10] Judge Rowan knew that Kants lived in New Jersey and it would lake [sic] a few days before they even get a copy of this order. An October 25, 2001-order requiring out-of-state resident-Kants to post bond by 10:30 a.m. on the date of the order itself violates Kants' due process rights.

17. Kants sent the bond by priority overnight mail service of Federal Express on October 24, 2001. They faxed copies of this mailing to both the Sheriff and Rigterink on October 24, 2001-evening. Upon knowing that the bond was coming, Rigterink and Sheriff evidently contacted the local Federal Express office and had them delay delivery

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[10] During this period, Kants were in constant touch with the clerks' office about posting the bond. However, the clerk's office informed Kants that it could not accept a bond from them before judge Rowan fixed the bond amount.

to the court that morning. Meanwhile, Sheriff sold the levied property (that he had appraised for $199,100) for $6,020. There was only one prospective purchaser for the property. Rigterink provided himself as the second purchaser in order to create a pretense of bidding. The bidding started at about 10:30 a.m. and ended soon thereafter. Only after the Sheriff, Rigterink, and the purchaser went away from the CC, did Federal Express deliver Kants' bond to the court (at 11:17 a.m.) The bond-check was deposited in the court registry at 11:47 a.m.

18. After the bond was deposited in the Court, Rigterink objected to it on grounds that a bond in the form a personal check [sic] could not be accepted by the Court. As an attorney practicing in Montgomery County, he knew, or should have known, that form of the bond (a personal check) was consistent with the court practice. The Sheriff filed his report of sale with the CC on November 6, 2001. Kants filed their motion to quash report of sale and release levied property on November 14, 2001. In this motion, they stated that their check had cleared from their bank on October 29, 2001, and, as required, served a copy of this motion on Rigterink. Still, Rigterink did not withdraw his objection to the bond. The result was that the CC clerk did not release Kants' property from levy (even after the bond had been posted and cleared from Kants' bank). Rigterink's (default) district court judgment has been fully secured by the bond since October 25, 2001. Yet, due to his invidious animus against Kants (due to their race, ethnicity, ancestry and descent), Rigterink has asked for the CC's ratification of the sale, opposed interlocutory appeal of the CC's denial of the motion to quash attachment, and opposed second interlocutory appeal of CC's ratification of the sale.

19. As stated above, the purpose of this conspiracy was to force a Sheriff-sale of Kants' property, and not release it from levy even after the bond had been posted. All the actions listed above were acts in furtherance of this conspiracy motivated by racial/ethnic animus. The objective of this conspiracy was to deprive Kants equal protection of the laws or of equal privileges and immunities under the laws. Injury to Kants' rights or privileges as citizens of the United States has also been stated above. The injury to Kants' person or property is emotional damage, amount spent in court costs, copying, mailings and preparing filings etc; and legal expenses incurred in trying to defend their civil rights *pro se*.

Second Count: Claim Under 42 U.S.C. § 1986.

October 2001 and before that: Conspiracy between Sheriff, Federal Express, Judge Rowan, and his Law Clerk, Drew Cole.

20. Plaintiffs have alleged this conspiracy above with Rigterink as a participant. Now Plaintiffs allege the same controversy with Rigterink not as a participant but as somebody who had knowledge that wrongs were about to occur, had power to prevent these wrongs, and who failed and neglected to prevent these wrongs. These neglects and failure occurred on October 25, 2001 and later. The purpose of the conspiracy and the roles of judge Rowan, Drew Cole, Sheriff, and Federal Express on the claim under this count are identical to those stated above for Count One. The different role of Rigterink is explained below.

21. As stated above, judge Rowan's October 25, 2001 order required that the bond must be posted by 10:30 a.m. on October 25, 2001. Kants sent the bond by priority

overnight mail service of Federal Express on October 24, 2001. They faxed copies of this mailing to both the Sheriff and Rigterink on October 24, 2001-evening. Upon knowing that the bond was coming, Sheriff evidently contacted the local Federal Express office and had them delay delivery to the court that morning. There was only one prospective purchaser for the property. Still, the Sheriff sold the levied property (that he had appraised for $199,100) for $6,020. Rigterink was present at the sale. He knew that the bond was coming by Federal Express, and selling the property at that time would be a wrong committed on Kants and would be extremely prejudicial to Kants. As the judgment-creditor, he could have instructed Sheriff to wait for the Federal Express delivery to the CC that morning and delay auction until that time. He could have objected to auction with only one purchaser.[11] He failed to do either. By these failures, he indirectly aided in wrongs being inflicted on Kants. Rigterink had knowledge that wrongs were about to occur. He had the power to prevent these wrongs. He failed and neglected to prevent these wrongs. Injury to Kants' rights or privileges as citizens of the United States and to their person or property are stated above.

Third Count: Claim Under 42 U.S.C. § 1983

22. 28 USCS § 1343(a)(3) is the jurisdictional counterpart of 42 USCS § 1983. Both these sections require that the challenged action(s) must have been performed under-color-of-state-law. However, the Supreme Court has

[11] Instead, Rigterink provided himself as the second purchaser in order to create bidding, and made the auction-sale possible. He could have prevented the auction by not offering himself as the second bidder.

held that private individuals who conspire with state officials in prohibited action act under color of state law for purposes of § 1983. *Adicks v. S.H. Kress & Co.* (1970) 398 US 144, 26 L Ed 2d 142, 90 S Ct 1598. To act under color of state law does not require that the private individual be an officer of the state; it is enough that he is a willful participant in joint activity with the state or its agents. *Adicks v. S.H. Kress & Co.* op. cit. A private party may be named as a defendant in a civil rights action when the party has taken some action which has, in turn, triggered other action by state officials. *Long v. Citizen's Bank & Trust Co.* (1983, DC Kan) 563 F Supp 1203. When a private party joins with state officials to violate a person's constitutional rights, jurisdiction may be conferred by 28 USCS § 1343(a)(3) over the private party, even though the state official may be immune from suit. *Brooks v. Peters* (1971, ED Wis) 322 F Supp 1273; *Sparks v. Duval County Ranch Co.* (1979, CA5 Tex) 602 F2d 976, affd 449 US 24, 66 L Ed 2d 185, 101 S Ct 183. A private person who conspires with a judge, who is himself immune from damages liability, is acting under color of state law for purposes of § 1983 actions. Dennis v. Sparks (1980) 449 US 24, 66 L Ed 2d 185, 101 S Ct 183.

23. Plaintiffs have alleged above under Count One that Defendant conspired with CC clerk, Federal Express, judge Rowan, and his law-clerk, Drew Cole, to force a Sheriff-sale of Kants' attached property, and not release it from levy even after the bond had been posted. As stated above, Kants sent the bond by priority overnight mail service of Federal Express on October 24, 2001, and faxed copies of this mailing to both the Sheriff and Rigterink on October 24, 2001-evening. Upon knowing that the bond was coming, Rigterink or Sheriff evidently contacted the local Federal Express office and had it delay delivery to

the court that morning. Meanwhile, he and Sheriff sold the levied property (that the latter had appraised for $199,100) for $6,020. There was only one prospective purchaser for the property. Rigterink provided himself as the second purchaser in order to create a pretense of bidding and to make this auction-sale feasible. After the bond-check was deposited in the court registry at 11:47 a.m., Rigterink objected to it on grounds that a bond in the form a personal check [sic] could not be accepted by the Court.[12] Even after Rigterink learnt [sic] that the bond-check had cleared from Kants' bank, he did not withdraw his objection to the bond. The result was that the CC clerk did not release Kants' property from levy. Rigterink's (default) district court judgment has been fully secured by the bond since October 25, 2001. Yet, he has asked for the CC's ratification of the sale, opposed interlocutory appeal of the CC's denial of the motion to quash attachment, and opposed second interlocutory appeal of CC's ratification of the sale. All these actions by Rigterink were directed towards violating Kants' federal right to hold and sell real property.

24. As stated above, the objective of this conspiracy was to deprive Kants equal protection of the laws or of equal privileges and immunities under the laws. Injury to Kants' rights or privileges as citizens of the United States has also been stated above. The injury to Kants' person or property is emotional damage, amount spent in court costs, copying, mailings and preparing filings etc; and legal expenses incurred in trying to defend their civil

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[12] As an attorney practicing in Montgomery County, he knew, or should have known, that form of the bond (a personal check) was consistent with the court practice.

rights *pro se*. An action against the Defendant is permissible under 28 USCS § 1343(a)(3): his actions were under the color of state law since he conspired with state officials, the Sheriff and CC Judge Rowan. This section does not require that a racial or class-based discrimination must be alleged. It merely requires that plaintiff raise a federal question. The federal question is whether defendant undertook the actions complained of to violate Kants' federal rights to hold and sell real property.

Fourth Count: Claim Under 28 U.S.C. § 1331

25. The cause of action stated under Count 3 above is the general federal question claim. Jurisdiction for Count 3 above is provided by 28 U.S.C. § 1343(a)(3). Any cause of action over which 28 U.S.C. § 1343(a)(3) provides jurisdiction can be brought under 28 U.S.C. § 1331 also. *Monks v. Hetherington* (1978, CA10 Okla) 573 F2d 1164. The advantage of bringing a civil rights claim under 28 U.S.C. § 1331 rather than 28 U.S.C. § 1343(a)(3) is that the former does not require that defendants be acting under-color-of-state-law. *Lynch v. Household Finance Corp.* (1972) 405 US 538, 31 L Ed 2d 424, 92 S Ct 1113, reh den 406 US 911, 31 L Ed 2d 822, 92 S Ct 1611. Plaintiffs also bring a claim stated in Count 3 above against Defendant under 28 U.S.C. § 1331 as Count 4 of their claim. Count 4 claim is identical to the Count 3 claim except that it does not require that Defendant was acting pursuant a conspiracy [sic] with immune state officials. With this qualification, the statement of this Count 4 claim and remedies requested are identical to those stated for the Count 3 claim above.

Fifth Count: Claim Under 42 U.S.C. § 1981

26. This section provides that all persons within the U.S. are entitled to the same right to (among other things) make and enforce contracts and to give evidence as is enjoyed by white citizens. "Make and enforce contracts" is further defined to include performance and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship. The statute forbids all racial discrimination in not only making but also performance of all contracts. Defendant entered into a contractual relationship with Kants on June 14, 1999, but did not perform on it. He worked contrary to the contract's intentions; and did not give Kants the enjoyment of benefits, terms, and conditions of the contractual relationship. As explained above for Count One, the conspiracy in June 1999, Rigterink only pretended he was working hard for Kants. In actuality, he sabotaged Kants' case. He was motivated by racial discrimination: he actually worked for the white tenant even while taking money from the Indian-American Kants. Congress intended to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics, and § 1981, at a minimum, reaches discrimination against an individual because such an individual is genetically part of an ethnically and physiognomically distinctive subgouping [sic] of homo sapiens, although a distinctive physiognomy is not essential to qualify for § 1981 protection. St. Francis College v. Al-Khazraji (1987) 481 US 604, 95 L Ed 2d 582, 107 S Ct 2022, 43 BNA FEP Cas 1305, 43 CCH EPD ¶ 37018, reh den 483 US 1011, 97 L Ed 2d 749, 107 S Ct 3244, 43 CCH EPD ¶ 37130. He violated Kants' civil rights granted by 42 USCS § 1981.

27. Similarly, as stated above, on February 13, 2001, C. Kant advised Rigterink that he had requested for a continuance to 9:15 a.m. on February 14, 2001. C. Kant further requested him to inform the judge that C. Kant had advised Rigterink of this continuance-request in case the case was called earlier. However, when the case was called that morning, Rigterink did not inform the judge of C. Kant's phone conversation (regarding continuance to 9:15 a.m.) with him the previous day. The result was that judge Harrington gave him the default judgment, and the Indian-American C. Kant was denied opportunity to give evidence to the Court. Rigterink was motivated by racial animus in making it feasible for the Court to deny Kants an opportunity to provide their evidence, and violated Kants' rights under 42 USCS § 1981.

Sixth Count: Claim Under 42 U.S.C. § 1982

28. This section provides, among other things, that all U.S. citizens shall have the same right to hold real property as is enjoyed by white citizens. Defendant objected to Kants bond claiming that a bond in the form of a personal check was not acceptable. However, even after the bond had cleared from Kants' bank, and Kants provided informed Rigterink of this fact, Rigterink did not withdraw his objection to the bond. Under Maryland Rules, the circuit court clerk is obliged to release attachment after partial execution of sale if a bond is posted. However, if an objection to the bond is posted, the clerk can dissolve attachment only after a court order. Rigterink's objection to the bond, and its non-withdrawal, prevented the clerk from releasing the property upon posting of the bond. Rigterink purposely did not withdraw his objection to the bond, even though his judgment had been

fully secured by the bond since October 25, 2001, because of his racial and ethnic animus towards Kants. The CC judge Rowan rejected the bond on April 10, 2002, i.e. about six months after it was posted, on grounds that it was received 77 minutes late on October 25, 2001. However, had Rigterink withdrawn his objection to the bond in the beginning of November 2001 itself, the clerk would have been obliged to release the property from levy at that time. The tenant subsequently vacated the property and Kants have been unable to put the property for sale because of the levy. They paid mortgage on the property for three months while it was vacant, have been unable to make mortgage payments since then, and are facing ruin of their credit rating and bank-foreclosure. In addition, they have incurred a large amount in legal expenses *pro se* in trying to get this property released from levy and suffered emotional damage. All this injury to Kants could have been avoided by the simple step of Rigterink withdrawing his objection to the bond after the bond-check cleared from Kants' bank on October 29, 2001. By not withdrawing his objection to the bond even after the bond-check cleared from Kants' bank, Rigterink violated Kants' right under 42 USCS § 1982 to hold and sell their real property.

29. If relief is not granted, Kants will be irreparably denied rights secured by the Constitution, laws, or statutes of the United States.

30. Kants seek compensatory, punitive, and exemplary damages and demand trial by a duly constituted jury. In addition, Kants seek compensatory damages that flow from the wrong itself, that is, damages to their peace and happiness, damages for humiliation and embarrassment, damages for emotional and mental anguish, and damages for impairment of reputation. In addition, Kants

request equitable orders that the Court reprimand Rigterink, order him to undergo racial sensitivity training, and order him to perform 100 hours of pro bono legal services each for African-Americans, for Hispanic-Americans, and for Indian-Americans, Chinese-Americans, and other Asian-Americans, i.e. a total of 300 hours of pro bono legal services to these minorities.

WHEREFORE, Plaintiffs Chander Kant and Ashima Kant, pray that the Court grant such relief as may be appropriate, including injunctive orders, damages, and costs.

Respectfully submitted,

/s/ _____

Chander Kant, Ashima K. Kant
19 Birchwood Drive
Short Hills, NJ 07078
(973) 258-0956

APPENDIX TO AMENDED COMPLAINT
(Civil Action No. WMN-02-2371)

BACKGROUND TO THIS DISPUTE

1. This matter had its genesis in a complaint filed by, Barbara Wetherell (Wetherell), tenant of one of Kants' properties with the Landlord-Tenant Commission (Commission) of Montgomery County. On April 18, 1997, Wetherell entered into a lease agreement with Kants for leasing from May 15, 1997 to May 31, 1998 their property located at 13110 Mica Court, Silver Spring, MD 20904. The agreement provided that property shall be inspected prior to possession. On May 6, 1997, Wetherell inspected

the property and found it to be in "good and satisfactory order and repair."

2. Kants earlier had an encounter with Michael T. Denney (Denney), an employee of the Department of Housing and Community Affairs (Department) of Montgomery County Government. Denney sent a housing code inspector to the property on October 6, 1996 who found code violations like: some bare spots in yard not covered by ground cover, a splash block not exactly under a downspout, a missing brick on the fire place, a nail head popping out on the ceiling, and deteriorated wood sections of the fencing.[13] Although Kants complained about Denney's conduct and the code violations notices to his supervisor, the County's Human Relations Commission, and filed an appeal with the County's Board of Appeals, they got all repairs completed in due course. This was confirmed by the Assistant County Attorney in a May 27, 1997 letter to Kants.

3. Wetherell moved into the property on May 27, 1997. Denney conspired with Wetherell to harass Kants. He instigated her to complain to the Department on July 18, 1997 that Kants had engaged in retaliatory actions due to her request for repairs.[14] Kants requested Denney to investigate the truthfulness of claim of defects in the property. Denney, as well as John P. Whitt (Whitt), another

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[13] Don White, the tenant during this period, denied he had complained to the Department for any of these things.

[14] Defendant falsely asserts (on pages 2 and 3 of its Motion to Dismiss) that the Commission and the circuit court hearings arose from alleged housing code violations. They, instead, arose from Wetherell's complaint that Kants had retaliated against her due to her request for repairs.

employee of the Department, refused. Yet, Whitt testified that his investigation did not indicate that Wetherell had made any untrue statements.

4. In contravention of the Department's rules and procedures, neither Denney nor Whitt attempted to conciliate the complaint. In fact, they spurned Kants' conciliation offers, and encouraged Wetherell to reject them.[15] Further, Wetherell mentioned in an October 24, 1997-fax to Whitt her advance understanding with Whitt. Denney refused both to correct the Case Summary for factual errors made by him and to send attachments to the Case Summary to Kants. He declined to include Kants' statement and documents they had sent to him for inclusion in the record. He drafted Wetherell's complaint.

5. Kants' attorney before the Commisison [sic], Jeff Brown (Brown), requested Denney on April 24, 1998 to summon (for the May 12, 1998-hearing) six repairers who could prove that Wetherell assertion of defects in the property had been wrong. Denney delayed sending these summonses for eleven days. He sent a fax to Brown after office-hours (at 6:16 p.m.) on May 5, 1998 that summonses to these repairers were ready to be picked up. He did not include in the record this fax to Brown (to hide the late issue of the summonses from Kants).[16] The late issue of these summons made it impossible for these repairers to be served and for Brown to make a strictly timely request for continuance due to unavailability of witnesses.

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[15] Further, Denney returned the letter in which Kants had made their January 30, 1998-settlement proposal without presenting it to Wetherell.

[16] Kants became aware of this document only when the County attorney cited it in her Memorandum on Appeal.

6. Denney acted as Wetherell's attorney at the hearing, and introduced her exhibits. In contravention of his written assurances and department rules, he did not serve on Kants before the hearing 104 pages of evidence he entered in the record at the hearing. He included in the case file documents on which Wetherell had made extensive notings; but refused to include in the record clean copies of these documents sent by Kants.

7. Plaintiff asked Denney to investigate whether Wetherell had tried to defraud them, whether a repair-company gave a kickback to the earlier tenant for accepting an inflated charge on his credit card, and to issue code violations notices to owners of other properties in that subdivision with similarly deteriorated fences. Denney and the department ignored these requests. When a white tenant or a white property owner complained, Denney and the department promptly complied. When the Indian-American Kants complained, Denney and the department ignored their complaints.

8. The Commission scheduled hearings for 6:00 p.m. on May 12, 1998 in Rockville, Maryland (even though it knew that Wetherell was vacating the property at the end of May 1998). Kants' new attorney at that time, Craig Zaller (Zaller) advised Kants that they did not have to come down to Rockville, Maryland from New Jersey for the hearing, he would file a motion for continuance, and the Commission would postpone the hearing on the basis that he needed time to prepare for the hearing. Based on this advice, Kants did not appear for the hearing. Zaller also did not appear before the Commission. The Commission held the hearing as scheduled, and denied Zaller's written continuance motion on the ground that Zaller did

not personally appear before the Commission to argue for it.

9. The Commission did not decide on the complaint on May 12, 1998, and extended the time for its decision. Denney included in the record numerous exhibits created by Wetherell after the date of hearing, and did not notify Kants in writing or otherwise that the Commission had extended the time for its decision. The Commission gave its decision about seven months after the hearing date – on December 16, 1998 – and awarded a judgment of $4,502 against the Kants. Denney's and Whitt's actions outlined above were dictated not by passion, prejudice, ill will, and other unworthy motive. These officials did not undertake any acts alleged in the above paragraphs when the landlords had a race/ethnicity other than Indian-American. These officials have racial animus against Kants and they conspired with Wetherell to violate Kants' civil rights. What happened after the Commission gave its decision is explained in the main body of this Amended Complaint.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitution of the United States of America

5th Amendment

Rights of Accused in Criminal Proceedings. – No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

14th Amendment

Section 1. Citizenship Rights Not to Be Abridged by States. – All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutes

42 U.S.C. § 1981 – Equal rights under the law

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S.C. § 1982 – Property rights of citizens

All citizens of the Untied States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property

42 U.S.C. § 1983 - Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1985 - Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure

his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within

such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1986 – Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action

therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

MOTION FILED
AUG 26 2004

(2)

04-124

In The
Supreme Court of the United States

CHANDER KANT and ASHIMA KANT, Petitioners,

v.

BREGMAN, BERBERT, SCHWARTZ & GILDAY, L.L.C.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF THE PROPERTY RIGHTS FOUNDATION OF AMERICA AS AMICUS CURIAE IN SUPPORT OF PETITIONER

Brian P. Murphy
Griffin, Farmer & Murphy
1912 Sunderland Place, N.W.
Washington, D.C. 20036
(202) 429-9000

TABLE OF CONTENTS

TABLE OF AUTHORITIES i

INTEREST OF *AMICUS CURIAE* 1

STATEMENT AND QUESTION PRESENTED 1

ARGUMENT

This country either has a system of general notice pleading or it does not. 1

Policy 2

Division in the Circuits 3

CONCLUSION 4

TABLE OF AUTHORITIES

Cases

Dickson, et al v. Microsoft Corporation, et al., 309 F. 3d 193 (4 Cir., 2002) 3

Spanish Broadcasting System of Florida v. Clear Channel Communications, Inc., et al., _____F. 3d _____ (11 Cir., June 30, 2004) 3

Swierkiewicz v. Sorema, 534 U.S. 506 (2002) 2,4

Tahfs v. Proctor, et al.,316 F. 3d 584 (6 Cir., 2003) 3

Rules

F.R.C.P. Rule 8(a)(2) 1,2

Miscellaneous

FRANK, JEROME, COURTS ON TRIAL (Princeton, NJ, Princeton University Press, 1949) 3

MOTION TO FILE BRIEF AS AMICUS CURIAE

Under Rule 37.2 of the Rules of this Court, Property Rights Foundation of America, Inc. ("PRF") moves for leave to file the accompanying brief in support of the petition for certiorari. Counsel for the Petitioner has consented to the filing of this brief, but counsel for the respondent has been asked and has not consented.

Property Rights Foundation of America, Inc. ("PRF") is a national, grassroots, New York-based not-profit organization dedicated to the right to own and use private property in all its fullness as guaranteed in the United States Constitution. PRF has been before courts, including this Court, as an *amicus curiae* or as "of counsel" representing the interests of property owners in a number of cases.

Amicus has a strong in interest in this Court's granting *certiorari* because the position of the Fourth Circuit Court of Appeals and other courts in certain cases requiring heightened pleading requirements adversely affects property owners whose rights often depend on open access to the United States legal system and whose causes of action are frequently unpopular.

WHEREFORE, the Motion for Leave to File the accompanying Brief of Property Rights Foundation of America, Inc. as *amicus curiae* should be granted.

Respectfully submitted,

BRIAN P. MURPHY

Griffin Farmer & Murphy
1912 Sunderland Place NW
Washington, DC 20036
(202) 429-9000

Counsel for Property Rights Foundation of America, Inc.

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS*

The interest of the *amicus curiae* is stated in the accompanying motion for leave to file this brief.[1]

STATEMENT AND QUESTION PRESENTED

For sake of brevity, Amicus adopts the statement of the case, question presented and factual statements made in the Petition for Writ of Certiorari. Amicus would add, however, that the impatience of the Maryland legal community with the Petitioners comes through loud and clear. It is plain that a jurist may *want* to throw out a case with such confrontational accusations but that is why there is a rule of law and a system of review through the writ of *certiorari*.

ARGUMENT

1

Pursuant to Rule 37.6 of this Court, amicus states that its counsel authored this brief and amicus paid for it. This brief was not written in whole or part by counsel for a party, and no one other than amicus made a monetary contribution to its preparation.

This country either has a system of general notice pleading or it does not. In the Federal court system, the decision was made in the affirmative in 1938 with the adoption of the Federal Rules of Civil Procedure. Rule 8 (a)(2) requires only a short and plain statement of the claim. A system of open, extra judicial, discovery was adopted to permit the claim, stated initially by only general notice, to coalesce and develop to a point where a detailed and factually complete claim would later be brought before the court for adjudication by a judge or a jury.

Without continued review and adjustment there is a tendency for reforms to return to the *status quo ante*. This Court detected such a tendency in the lower courts and by way of corrective action restated the broad intent of Rule 8(a) in *Swierkiewicz v. Sorema,* 534 U.S. 506 (2002). In an attempt to make its point in a memorable way, the Court gave honorable mention to the abbreviated but effective pleading known to practitioners of the law as the "Boyleston Street Complaint".[2]

In the present case the Petitioner more than stated a basic cause of action. A claim was stated but it was dismissed because it strained the "credulity" of the Judge. Complaint.

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Note 4 at 534 U.S, 513 states: "These requirements are exemplified by the Federal Rules of Civil Procedure Forms, which "are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate." Fed. R. Civ. P. 84. For example, Form 9 sets forth a complaint for negligence in which plaintiff simply states in relevant part: 'On June 1, 1936, in a public highway called Boylston Street in Boston, Massachusetts, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway'."

App. 12. But "credulity" is not a standard under Rule 8(a). That is a factor in later stages of proceedings but not at the pleading stage.

Perhaps the greatest advocate of the justice of general notice pleading was the late Judge Jerome Frank. In his acclaimed critique "Courts on Trial" he stated:

> "Yet adjudged by their aims, those reformers have failed. For all their admirable efforts they have not succeeded in bringing about what they promised - the easy, simple, unimpeded operation, in court, of the substantive rules in such a way as to prevent litigants from losing suits, which under those rules thy should win."[3]

The problem posed by Judge Frank continues to this day. Examples of the tendency of some federal judges to impose heightened (and unlawful) requirements for Complaints filed in federal courts are many. A few such examples, in addition to the case at bar, of the closing of the federal courthouse door to unfavored cases would include the following, all after *Swierkiewicz*:

> Fourth Circuit. *Dickson, et al v. Microsoft Corporation, et al.*, 309 F. 3d 193 (2002). ("However, I respectfully dissent. Whether or not Gravity would succeed on the merits, it has clearly stated claims under both § 1 and § 2 of the Sherman Act." Gregory, J., dissenting.)

3

FRANK, JEROME, COURTS ON TRIAL (Princeton, NJ, Princeton University Press, 1949) .

Sixth Circuit. *Tahfs v. Proctor, et al.*,316 F. 3d 584 (2003). (Clearly pled allegations of conspiracy with corrupt state officials, dismissal under 12(b)(6) affirmed because " . . . Tahfs makes unverifiable allegations of "corruption' . . ." at 592.)

Eleventh Circuit. *Spanish Broadcasting System of Florida v. Clear Channel Communications, Inc.*, et al., _____F. 3d _____ (June 30, 2004) (Clear allegations of antitrust violation, dismissal on the pleadings affirmed because plaintiff did not allege " . . . specific damage done to consumers in the relevant market.")

CONCLUSION

The policy of *Swierkiewicz* has been declared by this Court but has not taken effect uniformly in the Circuits. It is time for a reaffirmation. This case, involving an unpopular cause, presents an ideal set of facts to do this. For the foregoing reasons and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted:

BRIAN P. MURPHY
Griffin Farmer & Murphy
1912 Sunderland Place NW
Washington, DC 20036
(202) 429-9000
Counsel for Property Rights Foundation of America, Inc.
August 26, 2004